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Supreme Court of the United States

OCTOBER TERM, 1956

No. 41

AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL No. 427, AFL, ET AL., PETITIONERS,

vs.

FAIRLAWN MEATS, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

PETITION FOR CERTIORARI FILED MARCH 2, 1956
CERTIORARI GRANTED MAY 7, 1956

SUPREME COURT OF THE UNITED STATES

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[fol. 1] **IN THE COURT OF COMMON PLEAS**

No. 192338

No. 34542

PETITION—Filed February 8, 1954

1. Plaintiff is a corporation, duly organized and existing under and by virtue of the laws of the State of Ohio.

2. Local Union No. 427, Amalgamated Meat Cutters Union, affiliated with the American Federation of Labor, was, and still is, a voluntary, unincorporated association, made up respectively of a number of meat cutters residing in Akron and vicinity, members thereof, who are employed as such, in a number of meat markets in the City of Akron and vicinity; that defendants, Sam Pollock and James Daugherty, are officers and agents of said defendant union, and at all times hereinafter mentioned, acted and are still acting as the representatives of said defendant union, and within the scope of the powers and authorization.

3. Plaintiff is the operator of three meat markets located at 278 West Avenue, Tallmadge, Ohio; 2246 West Market Street, Akron, Ohio, and at the junction of U. S. Route #21 and State Route #176 in West Richfield, Ohio respectively; that as the operator of said meat markets, plaintiff is now, and for a long time has been possessed of a valuable good [fol. 2] will, trade and business, make up largely of a reputation for good meats which were sold to the public and has enjoyed the continued patronage of many hundreds of customers; that plaintiff employs approximately 50 employees in the three above places of business, and the good will, trade and business has been built up, maintained, and is dependent upon the care and skill with which plaintiff's employees serve the customers, and the kind and quality of the meat which plaintiff provides for its customers.

4. Plaintiff further avers, that its employees have at all times, been afforded the right to belong to any organization, labor or otherwise; that they have at all times had the right to bargain with the plaintiff, respecting their

wages, hours, and working conditions, either individually or collectively. Plaintiff's employees have at all times, had the right to employ or appoint any of their number or any other person or organization as their agent for the purpose of collective bargaining with the plaintiff.

5. Plaintiff's employees have been free from influence by the plaintiff as to whether they should deal with the plaintiff individually and directly, or collectively, through some agent appointed by them to represent them, in bargaining collectively with the plaintiff,

6. Plaintiff's employees have never requested plaintiff to negotiate and enter into a collective contract with them [fol. 3] or with any agent appointed by them. All of the plaintiff's employees, at all times, have dealt individually and directly with the plaintiff, respecting their wages, hours, and working conditions. On or about the 3rd day of February, 1954, the defendants and each of them, entered into an unlawful combination and conspiracy to injure and destroy plaintiff's good will, trade, and business, which said conspiracy still continues. The purpose of the conspiracy was and is to thereby compel and coerce the plaintiff to in turn coerce and compel his employees and each of them, to become members of said defendant union and to appoint the defendant union, or the officers thereof, as the exclusive agents for the purpose of collective bargaining with the plaintiff, or, in the alternative, to compel plaintiff to discharge its employees who refused to become members of said union, and to hire in the place of said employees therefor discharged, other persons who are members of said union and who have appointed the defendant union or its officers, as their exclusive agents, for the purpose of collective bargaining.

7. The plan of the defendants was, among other things, to prevent by force, violence, intimidation and persuasion, the operation of all of the meat markets of the plaintiff; to prevent by force, violence, intimidation, and persuasion, the entrance and exit of plaintiff's employees to and from the various meat markets of plaintiff; to so intimidate the [fol. 4] persons, firms, or corporations with whom plaintiff deals and the patrons of the plaintiff, so as to cause them to cease dealing with and patronizing plaintiff; to

prevent by force, violence, intimidation, and persuasion, the delivery of meats, foodstuffs, and supplies to the various meat markets of the plaintiff, all for the purpose of thereby coercing and compelling the plaintiff to in turn coerce and compel all of its employees to become union members and appoint and employ the defendant union, or the officers thereof, as their agents for the purpose of collective bargaining with the plaintiff.

8. In furtherance of said combination and conspiracy, defendants, acting in concert, on the 4th day of February, 1954, at 4:30 o'clock A. M., without notice to the plaintiff, caused a number of individuals to picket the meat markets of the plaintiff.

9. Plaintiff further avers that he has not joined said defendant union, and does not desire to join said union; and does not wish to be represented by said union and objects to being coerced to doing so.

10. Plaintiff further avers that there is no bona fide labor dispute in existence; that said pickets attempt to coerce customers from dealing with the plaintiff at his various markets and carry banners stating: "ON STRIKE". thereby intending to humiliate, annoy, disturb and coerce the plaintiff to join said union; that said acts of the defendants are a constant interference and nuisance [fol. 5] to the plaintiff in the operation of his business and subjects him to hardship, interference and intimidation; that the wording on said banners carried by said pickets is false and malicious and the patrons of the business of the plaintiff are led to believe that there is a dispute between the plaintiff and his employees, where as such it is not the fact, or that the plaintiff will not permit his employees to join the defendant union, where as such is not the fact; that defendants have prevented deliveries of the goods, meats, and merchandise to the stores of the plaintiff and that because of all of the unlawful acts of the defendants, plaintiff has been irreparably injured; that the good will, trade, and business of his meat markets has been irreparably damaged; that the damages sustained by the plaintiff are incapable of ascertainment; that plaintiff has no adequate remedy at law, and unless the relief requested is granted, plaintiff will be irreparably injured.

Wherefore, plaintiff prays that pending the final hearing and determination of the issues whereof, that defendant and their member of defendant union, their servants, agents, and employees and all other organizations acting in conjunction with them, be enjoined and restrained from engaging in any and all unlawful acts, and from interfering in any way with the plaintiff in the operation of his [fol. 6] various places of business, herein alleged, and that a temporary injunction against the illegal picketing and holding out to the world that the plaintiff is not a union man, be granted against said defendants, their agents, servants, and employees; that said defendants be enjoined from interfering with plaintiff in any manner in connection with the operation of the ingression or the egression of the various places of the business of the plaintiff and that upon final hearing whereof, a permanent restraining order and injunction be granted against said defendants, restraining them from their said illegal acts, and for such other and further relief as is just and proper in the premises, together with the cost of this suit.

(S.) Ray J. McGowan, Attorney for Plaintiff.

[File endorsement omitted]

[fol. 7] IN THE COURT OF COMMON PLEAS

JOURNAL ENTRY CONTAINING ORDER GRANTING TEMPORARY RESTRAINING ORDER—February 11, 1954

This cause came on to be heard on the application of the plaintiff for a temporary restraining order, and the evidence, and was submitted to the court. From the undisputed evidence that there is no evidence of a "strike" in either of plaintiff's two stores located at 278 West Avenue, Tallmadge, Ohio and 2246 West Market Street, Akron, Ohio; on consideration thereof, the court finds that the plaintiff is entitled to a temporary injunction against the defendants and each of them. It is therefore ordered, adjudged and decreed that the defendants, the officers and members of the Local Union No. 427, Amalgamated

Meat Cutters Union, affiliated with the American Federation of Labor, Sam Pollock and James Daugherty, their agents and employees, and each of them, be, and they are hereby temporarily enjoined and restrained:

1. From picketing, bannering or patrolling the stores adjacent to or in the vicinity of the plaintiff's places of business located at 278 West Avenue, Tallmadge, Ohio and 2246 West Market St., Akron, Ohio; from loitering [fol. 8] or congregating at or near any entrance of said places of business of the plaintiff as hereinabove stated.

2. From inducing or attempting to induce, any customer, prospective customers, or any person, firm or corporation with whom the plaintiff deals, not to deal with the plaintiff.

3. From in any manner preventing, interfering with, impeding, delaying or stopping any deliveries to the plaintiff or any food, meat, merchandise or supplies of any nature whatsoever.

4. From advising, protecting, aiding, abateing or assisting any person or persons in the commission of the acts hereby restrained.

It is further ordered that this restraining order be effective as to the following places of business, 278 West Avenue, Tallmadge, Ohio and 2246 West Market Street, Akron, Ohio, and it is further ordered that the temporary restraining order shall not apply to the place of business operated by plaintiff at the junction of U. S. Route #221 and State Route #176 in W. Richfield, Ohio. Bond $200.00. Exceptions to defendant.

(S.) Wanamaker, J., Judge.

[File endorsement omitted]

[fol. 9] IN THE COURT OF COMMON PLEAS

JOURNAL ENTRY GRANTING LEAVE TO FILE AMENDED ANSWER —March 26, 1954

Upon good cause being shown and on application of counsel for defendants, leave is granted defendants to file and serve an amended answer in the above matter.

(S.) Wanamaker, J., Judge.

[File endorsement omitted]

[fol. 10] IN THE COURT OF COMMON PLEAS

AMENDED ANSWER—Filed March 26, 1954

Now comes the defendants and leave of Court being first duly had, file their amended answer as follows:

1. The allegations of paragraph numbered 1 of the petition are admitted.

2. The allegations of paragraph numbered 2 of the petition are admitted except to say that the correct name of the defendant union is Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 427, a voluntary, unincorporated association.

3. Defendants admit that the plaintiff is the operator of three (3) meat markets as alleged in paragraph numbered 3 of said petition, but for want of knowledge deny each and every other allegation therein contained.

4. The allegations contained in paragraph numbered 4 of the petition are denied.

5. The allegations contained in paragraph numbered 5 of the petition are denied.

6. The allegations contained in paragraph numbered 6 of the petition are denied.

[fol. 11] 7. The allegations contained in paragraph numbered 7 of the petition are denied.

8. The allegations contained in paragraph numbered 8 of the petition are denied.

9. Defendants deny that plaintiff has been coerced to

be represented by this defendant union as alleged in paragraph numbered 9, and for want of knowledge deny each and every other allegation therein contained.

10. The allegations contained in paragraph numbered 10 of the petition are denied.

For their affirmative defenses to allegations contained in the petition, defendants plead further as follows:

11. On or about May 10, 1952, plaintiff and defendant union entered into a written agreement under the terms of which plaintiff recognized the union as the sole bargaining agent for all of its employees and agreed to meet with the union to negotiate a labor agreement and that when such agreement was concluded it would contain provisions establishing a union-shop and although the said agreement gave either party the privilege of terminating said agreement, plaintiff at no time prior to the filing of this action sent notice to the defendant of its intention to terminate said agreement.

12. From on or about February 4, 1954, to on or about [illegible]bruary 11, 1954, the defendant union and its members engaged in a lawful strike against the plaintiff by peace-[fol. 12] fully picketing plaintiff's operations at its three locations where it is engaged in business, until on the latter date defendants were restrained by a temporary restraining order of the Court of Common Pleas, Summit County, Ohio from further picketing of the plaintiff's business located at 278 West Avenue, Tallmadge, Ohio and 2246 West Market Street, Akron, Ohio, but were permitted to continue to picket the plaintiff's operation at West Richfield, Ohio and that said conduct has — all times been peaceful and orderly and for a lawful and legal objective.

13. Since on or about February 19, 1954, employees of the plaintiff employed by it at 278 West Avenue, Tallmadge, Ohio, members of defendant local union have been on strike.

14. These answering defendants further state that at no time since February 3, 1954, and down to the filing of the amended answer herein has there been any incident of unlawfulness or violence because of the presence of pickets and there has been no intimidation, coercion or restraint

of the plaintiff, its employees or the employees of any of plaintiff's customers of any other employer. The public has not been and is not being mislead as to the nature of the dispute; that entrances to the stores are not and have not been blocked and that ample ingress and egress has been permitted at all times to all persons; that shipments to and deliveries from the plaintiff, wherever situated have at no time been impeded or interfered with, nor any attempt made to do so; that defendants are not seeking the discharge of any of plaintiff's employees or the breach of [fol. 13] their employment rights with plaintiff.

For separate defenses to the petition, no one of which shall be considered a waiver of the other, these answering defendants further allege as follows:

15. The petition fails to state a claim against defendants upon which relief can be granted.

16. This court lacks jurisdiction over the subject matter of the petition for the reason that plaintiff is engaged in interstate commerce or that the subject of the petition involves a controversy arising out of a bona-fide labor dispute between plaintiffs and defendants affecting commerce and the free flow thereof and that the petition, as is apparent on the face thereof, alleges conduct constituting violations of the Labor-Management Relations Act, 1947, as amended, 29 U. S. C. A. Sections 141, et seq., exclusive jurisdiction over which is lodged in the National Labor Relations Board, subject to review in the federal courts, by the aforesaid Act of Congress and that plaintiff has a complete and adequate remedy at law under the provisions of the aforesaid federal statute.

17. Plaintiff has no claim to equitable relief, nor does it come into court with clean hands; it has not suffered, nor will it suffer irreparable injury and the conduct of the defendants invades none of plaintiff's rights guaranteed under the Constitution of the State of Ohio and is not in [fol. 14] conflict with or in violation of the law or public policy of the State of Ohio or of the United States.

Wherefore, these answering defendants pray that the petition be dismissed, that the temporary restraining order heretofore issued be vacated, that the relief requested by

plaintiff be denied and that defendants be allowed their costs herein assessed.

Smoot and Riemer, Attorneys for Defendants, 514 Bulkley Building, Cleveland 15, Ohio, SUperior 1-1930.

[File endorsement omitted]

[fol. 15] IN THE COURT OF COMMON PLEAS

REPLY TO AMENDED ANSWER—Filed April 14, 1954

1. Now comes the plaintiff and for its reply to the amended answer herein the plaintiff admits that a stipulation was entered into May 10, 1952 in the following words:

"This understanding entered into May 10, 1952 by and between the Ekers's Meats and Local Union 427 Amalgamated Meat Cutters and Butcher Workmen of No. America, A. F. of L.

"(1) The Employer agrees to recognize the Union as the sole bargaining agent for all of its employees.

"(2) The Employer agrees to meet with the Union to negotiate an agreement covering wages, hours and working conditions within two (2) week- of the signing of this Stipulation.

"(3) The Employer agrees that when an agreement is concluded it shall include a provision establishing a union security clause.

"(4) Nothing in this Stipulation denied either part the right to exercise their judgment in respect to the terms of the agreement to be negotiated, and either party may at their option cancel this Stipulation and exercise their respective rights after sincere effort has been made to conclude an agreement."

but respectfully alleges that said stipulation was without consideration, unenforcible and not binding upon this plaintiff.

2. Plaintiff denied that defendants were engaged in

legal strike from February 4, 1954 to February 11, 1954 [fol. 16] and respectfully alleges that said defendants did engage in striking and picketing against the plaintiff, but the same was for an illegal purpose.

3. Plaintiff admits that the Common Pleas Court of this County enjoined picketing at two of its stores, but permitted picketing at West Richfield, Ohio and denies that said picketing has been for a lawful and legal objective.

4. Plaintiff denies that since February 19, 1954 the employees of the plaintiff have been on strike at the Tallmadge, Ohio store.

5. Plaintiff denies that the picketing in which said defendants have been engaging since February 3, 1954 has not been free of intimidation, coercion and restraint and that the public has been deceived and misled and that entrance to the sohes *have* not been blocked and that shipments have been impeded and interfered with and that said defendants have engaged in a secondary boycott in that defendants have by intimidation and threats caused its chief supplier of meats to refuse to sell to this plaintiff and it has been required to obtain its merchandise elsewhere.

6. Plaintiff denies that the National Labor Relations Board has sole and exclusive jurisdiction of this matter and affirms its position that this Court has full jurisdiction [fol. 17] over the subject matter.

7. Plaintiff denies each and every allegation in paragraph 17 of the amended answer.

8. Wherefore, having fully replied, plaintiff prays for the relief sought in its original petition.

(S.) Stanley Denlinger, Attorneys for Plaintiff.

Duly sworn to by Stanley Denlinger. Jurat omitted in printing.

[File endorsement omitted]

[fol. 18] IN THE COURT OF COMMON PLEAS

FAIRLAWN MEATS, INC., Plaintiff,

vs.

LOCAL UNION No. 427, et al., Defendants

Transcript of Testimony

APPEARANCES:

Stanley Denlinger, Raymond J. McGowan, Robert Sheck, Attorneys at law, Akron, O., on behalf of Plaintiff.

Mortimer Riemer, Attorney at law, Cleveland, O., on behalf of Defendants.

Be It Remembered that upon the trial of the above entitled cause, on the 5th day of May, 1954, being a day in the April Term, 1954, of the Court of Common Pleas of Summit County, Ohio, before the Hon. C. V. D. Emmons, Judge presiding, the above cause came on to be heard and the following proceedings were had.

* * * * * * *

[fol. 19] EXCERPTS FROM OPENING STATEMENT OF MR. DENLINGER

The plaintiff, Fairlawn Meats, Incorporated, is a corporation of Ohio whose entire stock and holdings are owned by Mr. Bert Ekers and his wife. This plaintiff operates three places of business, a meat market out on 2246 West Market Street—that is the Sparkle Market there adjacent to Sand Run Road; and a market out here near Tallmadge —278 West Avenue, the former place of the Roccos—Bert [fol. 20] went in behind that bad situation there and has built up a very fine business at that location; and a market and cooler plant which has been acquired in the last several months on Route 176 in West Richfield, which is at the intersection of 176 and 21. The Court probably knows exactly where that is.

In the operation of these meat markets at these three locations the plaintiff employs approximately 50 people in all three places. There is no packing or slaughtering or that type of business conducted, it is a retail, over-the-

counter, largely of meats and eggs and butter and meat products, a very small amount of groceries—bread and some things like that. The purchases for these goods we sell are made entirely in the State of Ohio.

* * * * * * *

[fol. 21] During this long period of time prior to February 3rd, 1954, the defendant Union had been permitted by the plaintiff to interview the employees on the premises, on the Company's time, to induce the employees to join the Union. But the employees refused to join the Union and the employees indicated to the employer they did not want to join the Union.

So on February 3rd, 1954 (when the defendants, Pollock and Dougherty, insisted upon Mr. Ekers signing this contract for a Union shop, and he refused to do so, they immediately began picketing the three places of business, setting forth that Ekers Meats was unfair and on strike.

* * * * * * *

They are not employees picketing but many outsiders picketing.

* * * * * * *

[fol. 22] Now, the acts and conduct of these defendants has not only been to picket in groups of three and five at the driveways and entrances—stand right in the driveway, preventing the ingress and egress of customers to the place of business—but it has extended to going to Cleveland to the wholesale houses from which we have been making purchases of meat, and there inducing the wholesaler to refuse to sell products to us on the basis that the wholesaler would get in trouble if he continued to do so. And they discontinued selling to us.

* * * * * * *

—there being no dispute of any kind between the employees and the employer—the only dispute that arose here is the difference of opinion between the Union and the plaintiff as to whether or not the plaintiff must sign a contract compelling the employees of his stores to join this Union.

* * * * * * *

[fol. 23] We say that the evidence will prove to your Honor without question:

No. 1: We are not engaged in interstate commerce;

No. 2: We have refused to sign a contract which would require us to put our employees in the Union;

No. 3: This refusal to sign the contract brought about the picketing of our places of business;

No. 4: That in addition to the picketing, that they engaged in a secondary boycott in their acts and conduct towards this plaintiff;

No. 5: That those acts and conducts consisted of illegal acts which are enjoined in a court of equity.

* * * * * * *

[flo. 24] EXCERPTS FROM OPENING STATEMENT OF MR. RIEMER

* * * * * * *

The defendant, your Honor, in substance defends this action on two basic grounds:

First: We assert that under recent rulings of the United States Supreme Court, as to the plaintiff's operations affecting Ekers, that this Court has no jurisdiction to enjoin the peaceful conduct of the defendants in a controversy arising over a bona fide labor dispute, and where the alleged conduct of the defendants, as alleged in the petition, constitutes a violation of Federal Law.

* * * * * * *

[fol. 25] STATEMENT OF MR. DENLINGER

Mr. Denlinger: In the file you will find, your Honor, a copy of the order of Judge McNamee, and it says: "Upon consideration the Court finds that there are no allegations made in the plaintiff's petition showing a Federal question, or from which a Federal question may be inferred, and therefore finds this Court is without jurisdiction."

* * * * * * *

[fol. 26] They never had anybody on strike at West Market, and at this time—and this is the most they ever had—out of the fifty employees forty of them are still working. Only ten ever engaged in any picketing, your Honor please. And we have the resignation of four of that ten, that they are no longer our employees—voluntary [fol. 27] resignation—that they gave us after this started, and they are working some place else. So it boils down to this Union attempting to get for six of their members a contract that forty of the people do not want. And there will be offered in evidence in this case the signatures of all of these employees, your Honor, that I have mentioned —forty of them in which they direct to our attention that they are not in favor of signing any agreement to compel them to join the Union, and that they are satisfied with their wages, hours and working conditions.

* * * * * * *

this is an anomalous thing that I can't understand about this Union—if the Labor Board has the jurisdiction to select an agent here—and they claim they have because we are in interstate commerce—why don't they simplify this whole thing by going to the Labor Board, filing that little, simple petition for an election—it's all printed out with some blank spaces to fill in—and show the Board that they have sufficient interest in this employer that the Board will conduct an election. And the Board will determine whether or not they represent a majority, and if [fol. 28] they do represent a majority we will then by law be bound to recognize them without a picket line and the danger of being prosecuted for unfair labor practices if we do not negotiate and sign a contract. But they seek not to use the very law that they now say is applicable to this case to deprive this Court of jurisdiction. Why? Because they want to use the economic force of coercing this man in the compelling of his other forty employees to join a Union that they, over their signatures, say they do not wish to join.

* * * * * * *

the purpose of this picketing is not to settle any bona fide labor dispute but for the purpose of forcing this employer to put those people into their Union who do not wish to join.

. . . . . .

[fol. 29] SAM POLLOCK, called by the plaintiff for cross examination, being first duly sworn, testified as follows:

Cross-examination.

By Mr. Denlinger:

. . . . . .

Q. What is your business?

A. I am president of the Meat Cutters Local Union 427, affiliated with the Amalgamated Meat Cutters and Butcher Workmen of North America, A. F. of L.

Q. How long have you been in that position?

A. I have been in that position since May 12, 1953.

Q. Prior to that time what was your occupation?

A. My occupation was that of International Union representative.

. . . . . .

[fol. 30] Q. And Local 427 is made up of the employees of what business?

A. Employees who are employed in markets operating meat departments in a number of counties.

Q. What counties does Local 427 have jurisdiction over?

A. Cuyahoga, Summit, Stark, Portage, Medina, substantially.

. . . . . .

Our jurisdiction varies, depending on the circumstances. In markets which are combination markets, where groceries, produce and meats are sold in the area that we are in, we generally represent only the meat departments. There are some stores we have under our jurisdiction where the employees in the store, regardless of classification, are

members of our—that is, come under the terms of the agreement that we have negotiated for those particular places at various times. Our Union also has provision house employees, wholesale, retail—they might be porters, meat cutters, boners and so on.

. . . . . .

[fol. 31] Q. In other words, you claim your jurisdiction in a meat market is everybody that is employed by the operator of the meat market?

A. Excepting supervisory employees.

Q. You know Mr. Ekers?

A. Yes.

Q. How long have you known him, Mr. Pollock?

A. The first time I met him was in May, 1952.

Q. Where did you meet him?

A. At his store on West Market.

. . . . . .

Q. What was your conversation with Mr. Ekers?

A. I asked him to recognize the Union for collective bargaining purposes.

Q. How many members did you have at that time?

A. I don't recall.

. . . . . .

[fol. 32] Q. Just give how many employees of Mr. Ekers did your Union have in its membership in May, 1952, which is the time you say you talked to Mr. Ekers.

A. I'm sorry, I don't recollect. We had some membership.

Q. Can't you give us any idea?

A. We had some membership but I don't recollect.

Q. Can't you give me an idea whether it was five, ten or twenty?

A. I don't want to hazard a guess.

. . . . . .

Q. And you didn't inquire of your local union officers how many members you were representing in that contract?

A. I don't recall.

Q. You have no idea whether you had two or five or a majority?

A. I don't recall.

. . . . . .

[fol. 33] Q. Did you discuss union shop?

A. Yes, we discussed union shop.

Q. What did you say would be the terms that must be written into your agreement regarding the union shop?

A. Standard union shop agreement.

Q. You said he would have to sign that as other employers have signed it, is that right?

A. I never tell any one they have to do snything.

Q. Mr. Pollock, all your contracts with meat markets and packers contain the union shop clause, don't they?

A. That's right.

Q. Every contract you have with every person or company that runs a meat market must sign the contract with the union shop clause in it or you don't sign, isn't that correct?

A. No, that isn't altogether correct.

Q. Well, what is the exception?

A. The exception is that we never have told anybody they have to do anything against their wish.

Q. But they all do contain this clause, do they not?

A. Within my knowledge they all contain that clause.

Q. And you wouldn't sign a contract with Ekers without that clause, would you?

A. I don't know.

. . . . . .

Q. Do you know of a single contract that this Union, defendant in this case, has signed in all of these counties [fol. 34] that you say they operate in, that does not contain the union shop clause?

A. I don't know of any.

. . . . . .

[fol. 35] By Mr. Denlinger:

Q. Let me ask you the question: In 1952 you picketed Mr. Ekers place of business, didn't you?

A. That's right.

Q. While he was being picketed you then had a discussion with him with reference to taking the pickets off and recognizing your Union, isn't that right?

A. Yes.

. . . . . .

[fol. 36] Q. But after this was signed there was no picketing until February, 1954, was there?

A. Yes.

Q. That is correct?

A. That is correct.

. . . . . .

Q. Now, after May 10th, 1952, did you meet with Mr. Ekers at any time?

A. Yes, on several occasions.

. . . . . .

Q. I will hand you what has been marked for identification as Plaintiff's Exhibit 2 and ask you to examine those several papers and tell the Court what it is, if you know.

A. These are copies of our standard agreement. This is a copy of our standard agreement for the Akron area, and [fol. 37] then attached to it is a supplemental——

The Court: Why don't you refer to that as 2-A and 2-B?

Mr. Denlinger: I will be glad to.

The Court: Will you identify 2-A now?

The Witness: 2-A is a copy of the rates of pay negotiated by the Union with the industry, and which went into effect on June 1st, 1953, in certain areas, and which went into effect on September 1st in the Akron area, of 1953.

The Court: All right. 2-B?

The Witness: 2-B is our standard agreement for the Akron area which was negotiated and went into effect September 1st, 1952.

. . . . . .

Q. Now, can you tell the Court, if you can remember, any time that you discussed with Mr. Ekers the contents of [fol. 38] Exhibits 2-A and 2-B?

A. We had a number of meetings at which I was present with Mr. Ekers and Mr. Dougherty where we discussed negotiating an agreement, on several of those occasions——

Q. That was after the stipulation of May 2nd, 1952?

A. After the stipulation, yes.

Q. O. K.

A. We discussed, without any particular pattern, various provisions of the agreement—generally, on the basis of Mr. Ekers asking how this would apply or how that would apply, and what his problems were in relation to applying certain provisions. As I recall, one of the main problems of Mr. Ekers was the issue of Sunday operation and the employment of certain help who he felt were not qualified, who he said he had to employ because he couldn't get anybody else, and that he would need in order to make adjustments in his operation to come within the terms of the agreement. That was the gist of our conversations when the agreement, as such, was discussed.

Q. That was the discussion of hours then?

A. Discussion of hours?

Q. Yes.

A. I don't recall too much discussion on wages, but it was discussion of hours, discussion of Sunday operation.

Q. Discussion of the union shop?

A. Not the union shop provision itself.

Q. Did you ever attempt to talk to the employees at Tallmadge and West Market to join the Union on the company property?

A. I personally was never in those stores to talk to any of his employees.

* * * * * * *

[fol. 39] Q. So far as your records show, Mr. Ekers at no time showed any opposition of any kind toward you attempting to get his employees into the Union, is that correct?

A. Not altogether.

Q. What was the exception?

A. The exception is that while he did not forbid the representatives to contact and discuss Union with the people, that he did himself state that he did not want the Union in his place—he didn't like to see the Union come in, and he expressed himself that way to the people.

Q. To his employees?

A. To his employees.

Q. Were you present at any time that that happened?

A. No.

Q. Well, how did you know?

A. Mr. Ekers himself told me, personally.

Q. Mr. Ekers himself told you that he didn't want your Union in there. Is that right?

A. That he had talked to his people about that too.

Q. And what did he say about what his people thought about it?

A. He said that some of his people did not want to come into the Union.

Q. So that there was a duscussion with you and Mr. [fol. 40] Ekers about all his employees coming into the Union, wasn't there?

A. The discussion with Mr. Ekers on the question of his employees was always within the realm of how it would be done without any disturbance to his people or to his operation.

. . . . . .

[fol. 41] Q. But you included in that understanding that a union shop provision would be a part of a standard contract?

A. We never discussed whether it would or wouldn't be. We assumed, without discussing, that the stipulation providing for recognition and union shop would be made part of the contract, and our problem in all negotiations at the time with Mr. Ekers were the economic problems primarily—economic questions primarily.

. . . . . .

[fol. 42] Q. Mr. Pollack, will you tell the Court when this strike that brought about the picketing was called in this case?

A. The strike occurred on February 4th, 1954.
Q. When was it called?
A. It was called February 4th, 1954.
Q. Who called it?
A. Called by a vote of the members on February 2nd, 1954.
Q. Vote of what members?
A. The entire membership.
Q. The entire membership of what?
A. Of Local No. 427 present at the Akron section meeting.

• • • • • • •

Q. Were Ekers' employees represented?
A. They were present, some of them.
Q. How many of them?
A. I don't know.
Q. Any idea?
A. No, I haven't any idea.
Q. How many members were present at the taking of this strike vote?—Pardon me—was a strike vote taken?
A. A strike vote was taken on February 2nd, 1954.
Q. Strike vote was taken on February 2nd, 1954?
A. Yes.
Q. Who participated in that strike vote?
A. The members.

• • • • • • •

[fol. 43] Q. What was the number of membership at this meeting in round numbers?
A. I don't recall. Might have been 70—80—90 people.
Q. Less than a hundred, more than 50. Is that safe?
A. Possibly in those numbers.

• • • • • • •

Q. How many of Ekers employees were there?
A. I don't recall. I saw several.
Q. Can you give an idea?
A. I saw several there but I don't know how many, all told, were there.
Q. Was there less than ten?
A. I don't know.

• • • • • • •

[fol. 44] Q. You attended this meeting at which a strike vote was taken on February 2nd, 1954, is that right?

A. Yes.

Q. Did you speak at that meeting?

A. I made a report.

Q. What report did you make?

A. I made a report on our negotiations with Mr. Ekers.

Q. What did you report with reference to those negotiations?

A. That we had been unable as yet to reach an agreement with Mr. Ekers for an agreement covering wages, [fol. 45] hours and working conditions.

Q. What else did you say?

A. And asked for approval, in the event that it was necessary to call a strike, that the Union would authorize the calling of a strike.

Q. You suggested they call a strike?

A. I suggested they authorize the officers to call a strike in the event an agreement could not be reached.

Q. That was the 2nd of February?

A. That is right.

Q. Did you meet with Mr. Ekers after that?

A. February 3rd.

Q. What did you say to Mr. Ekers on February 3rd, 1954?

A. Mr. Ekers first told me that he didn't care to negotiate now. I advised him that this wasn't a satisfactory answer and asked him if he wouldn't enter into specific negotiations with the specific clause in the contract and try to work out an agreement. Mr. Ekers says, "I don't care to negotiate now. I am leaving the door open." I says, "That doesn't tell us anything."

Q. That is February 3rd?

A. That is February 3rd. I says, "We have been meeting now actively since October. We have had the stipulation since May, 1952, and we have been meeting since October, trying to resolve this problem. Can you understand that your answer isn't satisfactory? That we feel we have given sufficient time to the matter." We didn't ask him to sign a contract at that meeting, we asked him only to continue negotiations with us for *for* an agreement. And

Mr. Ekers said, "I don't care to negotiate a contract now." I said, "Well, under those circumstances you fully under-
[fol. 46] stand that we may exercise our right to strike."

The Court: That was after the strike had been called?

The Witness: That is after it had been—the officers had been authorized to call a strike in the event we couldn't reach an agreement, to strike.

The Court: That meeting was February 2nd?

The Witness: February 2nd, Union meeting.

The Court: That was when they elected to declare a strike?

The Witness: No. It was when they authorized the officers to call the strike when and if necessary in the event we couldn't reach an agreement. But we tried everything—I tried everything.

* * * * * * *

[fol. 47] Q. There was a meeting arranged between you and Ekers and Dougherty for Cleveland, February 3rd, is that right?

A. I believe so, yes.

Q. When had that meeting been arranged?

A. Well, that meeting was arranged on a sort of an indefinite basis. That is, after our last meeting with Mr. Ekers he was to let us know when he would meet with us again. So he held a meeting with some of his employees—I guess on a Monday, February 1st. We had our Union meeting February 2nd. Mr. Dougherty, as I understand it, contacted Mr. Ekers and asked him when we could have that meeting. The date February 3rd was suggested. And Mr. Ekers suggested that it would be all right to be in Cleveland since he was coming into Cleveland anyhow. And so he came to our office on February 3rd.

Q. What did he say to you?

A. He said, after some preliminary discussions, "I don't care to negotiate now. I don't want to close the door."

Q. What did he say about his employees not joining the Union?

A. He told me some of his employees didn't want to join the Union.

Q. He told you that February 3rd, 1954?

A. That's right.
Q. In your office?
A. Yes.
[fol. 48] Q. In the presence of Mr. Dougherty?
A. Yes, among other things.
Q. When did you start the picket line?
A. February 4th.
Q. What time in the morning?
A. I don't recall exactly the time—around five o'clock—six o'clock.
Q. Around five *O*'clock in the morning on the 4th of February? Is that right?
A. I believe so.

. . . . . .

[fol. 49] Q. Will you tell the Court who was picketing at the Tallmadge store, if you know.
A. Members of our Union?
Q. Members of the——
A. Members and officers of the Union.
Q. Of the Amalgamated——
A. That's right. Meat Cutters Local No. 427.
Q. Were there any employees of the Tallmadge store picketing on the 5th?
A. I don't think so.

. . . . . .

As I recall on February 4th, for the period of time that I was there I don't recall seeing any employees—that is, members of our Union—on the picket line.

. . . . . .

[fol. 50] Q. Now, you are familiar with the location of the Tallmadge store and the adjoining lots in the country there, are you?
A. Yes.
Q. Across the street from Ekers market in Tallmadge there is a strip at the side of the road that was used by a number of cars for your pickets, is that correct?
A. Yes. We received permission from the City of Tall-

madge to park a number of cars off the road, opposite, across the street from the Tallmadge store.

Q. Now, those cars and occupants were in addition to the pickets that you had just across the road, carrying the banners and picketing the entrances?

A. I don't know what additions they were. They might have been relief—they may have been there. The important thing is that I don't recall—unless a relief change was occurring—the relief coming up and taking the sign and two leaving—only at that time would there be more than two people at any of these—unless somebody stopped to talk to them.

Q. With reference to the driveways entering off of the highway into the place of business and the curb, where would these pickets be operating?

A. In reference to the distance from the curb?

. . . . . .

[fol. 51] The Court: Do you understand the question, Mr. Pollack?

The Witness: I think I do. They would operate within a six to eight foot radius of the curb, walking from the limits of the driveway—that is, not stay in one place—and the driveway—and the south driveway I think is about something like 50 to 60 foot wide, and the north driveway is about 35 to 40 feet wide.

. . . . . .

If there weren't sufficient pickets—that is, to man these [fol. 52] places—then the pickets would picket within the five foot devil-strip between the driveways and would not be in the driveway at all. We just didn't have the manpower.

. . . . . .

[fol. 53] Q. At each entrance?

A. At each entrance, except for the time when there weren't that many pickets, then they would walk this strip in here, within five feet of the curb, between here and there, and wouldn't be in the driveway.

The Court: On Plaintiff's Exhibit 3, the three pickets

that are standing are standing on the wider driveway of the two?

The Witness: No, it's the narrower driveway. That's why I would assume that a change in pickets was taking place at that time. This driveway is a very wide driveway.

• • • • • • •

[fol. 54] Q. You did observe as cars would come into the entrance the pickets would ask to talk to the drivers of the cars as they came across the drive, didn't they? You noticed that?

A. If the car stopped we would talk to them; if the car didn't stop we didn't talk to them.

Q. Well, the pickets were in a position many, many times every day that the driver of the car would have to run them down if they didn't stop, isn't that correct?

A. That is not correct. I was there——

Q. The pickets didn't yield the driveway to those who came in and out, but rather, they just kept walking across as they saw leisurely fit to do so. Isn't that correct?

A. While I was there and directly observed it, we always stepped out of the way of the car coming in. If they wanted to stop that was their business—we would talk to them. And if they didn't stop there wasn't any way we could stop them from going right on in.

Q. What did you say to them when they stopped?

A. We told them we were on strike.

Q. What else did you tell them?

A. Asked them to please respect our picket lines.

Q. What else did you tell them?

A. That was the substance of it.

[fol. 55] Q. Didn't you tell them, "Don't patronize this place." Didn't you use that exact expression?

A. I think we used the term: "Please don't patronize Ekers Meats. We are on strike." Words to that effect.

Q. How many pickets did you have out on West Market Street on the morning of February 4th?

A. Well, I wasn't there on the morning of February 4th. I believe there were two, from the information that I was given.

Q. Were either one of those people employees of Ekers at the Market Street store?

A. They were members of our organization.

Q. But not employees of Ekers?

A. I don't know, because I wasn't there on the morning of February 4th.

Q. How long did this picketing continue at these stores?

A. For the time that the store was open.

Q. From February 4th at 5 o'clock to what date in February?

A. Oh, I believe the date in February when the injunction restraining picketing at West Market and at Tallmadge was issued was February 11th.

Q. All right. Now, you stopped picketing on February 11th, is that correct? At these two stores.

A. That's right.

Q. Now, when did you resume picketing?

A. We resumed picketing I believe it was February 26th —around February 26th—I would have to look at the record to refresh my memory.

Q. Let me refresh your recollection on that. You filed your motion on February 26th.

A. Oh, we filed that on February 26th?

Q. To modify.

A. Then it would be the following day.

[fol. 56] Q. And on March 5th is when I have it that Judge Wanamaker told us he was without jurisdiction because the case had been removed by you defendants to the Federal Court. Do you recall that is approximately correct?

Mr. Riemer: We would so stipulate, your Honor. Those dates are approximately correct. Your Honor, however, is that any issue in this proceeding?

The Court: I do not feel that it is.

Mr. Denlinger: Your Honor, I want to show the conduct of these people as bearing upon their motive and the legality of their picketing.

The Court: You mean the conduct after Judge Wanamaker had issued a restraining order?

Mr. Denlinger: Yes, your Honor.

The Court: All right. Go ahead.

Q. Did you resume picketing on March 6th, you and Mr. Dougherty and the others?

A. If that is the date—if that date followed the day we were in Judge Wanamaker's court when he advised us that he no longer had jurisdiction in view of the fact of the action taken in Federal Court—we resumed picketing the following day.

Q. How long did that continue.

A. That continued until the day of the order of the Federal Court to remand back to the state courts.

Q. How many days was that, do you recall?

A. I think it was eighteen or nineteen days.

Q. During that time you picketed the same locations and in the same manner as you had begun on February the [fol. 57] 4th?

A. When we resumed picketing we resumed picketing with the employees who were on strike and members of our organization.

Q. Well, who were the employees on strike at the Tallmadge store that picketed prior to March the 6th—any of them.

A. I don't recall.

Q. Well, you wouldn't say there was any of them, would you?

A. No, I wouldn't say there wasn't any of them.

Q. Or that there was?

A. Or that there was. I wasn't there all the time.

. . . . . .

[fol. 58] Q. These other Unions did support you, didn't they?

A. I believe there was some support because members of organized labor did not cross our picket lines.

[fol. 59] Q. Tell the Court what support was given you.

A. I don't know precisely the support that was given us. All I can infer is that people, who identified themselves to me, when I was on the picket line, as being members of Labor, said, "O.K. You got a strike here; we won't cross your picket line."

Q. People told you that while you were on the picket line?

A. That's right.

• • • • • • • • •

Q. Don't you know, as a matter of fact, that teamsters refused to corss your picket lines to make deliveries?

A. I imagine there were some teamsters who refused to cross picket lines.

Q. And deliveries weren't being made, so that Mr. Ekers himself had to try to get deliveries made for his business; you know that, didn't you?

A. I assume that may have occurred.

• • • • • • • •

[fol. 60] Q. Let's go to the Market Street store. How long did the picketing continue there, on the basis you outlined of two of the pickets in the same manner and for the same purpose as out at Tallmadge?

A. The picketing at the West Market Street store, insofar as the starting of picketing and the ceasing of picketing, cessation of picketing and resumption of picketing, it was identical with that of Tallmadge.

• • • • • • • •

Mr. Riemer: Counsel for the defendant is willing to propose the following stipulation: that the picketing at West Market Street and Tallmadge ceased on or about February 11th, 1954, following the issuance of the temporary order by Judge Wanamaker, but was resumed on or about March 6th, 1954 at both West Market Street and Tallmadge, and continued thereafter at those locations until on or about March 25, 1954.

• • • • • • • •

[fol. 61] Now, the picketing at Richfield still continues, does it not?

A. Yes.

Q. And the picketing at Richfield has gone on since the same morning that the picketing started at the other two stores?

A. Yes.

Q. And would you describe to the Court the nature of the picketing at Richfield?

A. The nature of the picketing at Richfield is pretty much the nature of our picketing at West Market and at Tallmadge, and that is that in respect to the drivers, we might have two people out picketing and relief available.

The Court: Two people at each driveway?

The Witness: Well, there is—your Honor, at West Richfield you can drive on there—not through the driveway, but you can get over to where the parking lot—or parking right in front of the market—from about twenty different directions. I mean there are some driveways, but the curb is low and they go over it any place or anywhere.

The Court: And people were picketing there?

[fol. 62] The Witness: We would generally have—we would try to have—I'll put it that way—two at one end and two at the other end, but it didn't always hold up—sometimes picketing would go down to just two people for the entire stretch—sometimes just one.

* * * * * * *

The Court: Can we stipulate this: The picketing at Richfield is done in compliance and in conformity to Judge Wanamaker's order?

Mr. McGowan: Oh, no, your Honor. He authorized picketing but they have been picketing on Mr. Ekers' property at all times, because out in the County you own out to the road. They are on his lot every day. He didn't authorize them to picket on Ekers' lot, and they have been on Bert's lot out there in all their picketing, because we own to the curb.

* * * * * * *

But he did not authorize you to picket on Bert's property, and that's where you were picketing and have been at all times. There is no walk out there and he owns right to the road. They can't go up on a man's property and picket.

* * * * * * *

[fol. 63] The Court: I am not saying it was not illegal for them to trespass; it is. But I am wondering whether or not, further than that, that they deliberately violated Judge Wanamaker's order.

Mr. Denlinger: There was no order made against the folks at Richfield.

The Court: That is all I wanted to know.

* * * * * * *

[fol. 64] Q. What I am driving at is you have a general knowledge of the location and so on, that you can give the Court some description of where the place of business is located with reference to the highway and the conduct of the pickets in connection with that particular place of business. Will you tell us that in your own way?

A. I can try.

The Court: Is this Richfield *of* West Richfield?

The Witness: West Richfield.

Mr. Denlinger: At the intersection of 176 and 21.

A. The store sits back about 50 feet from the curb line of the highway. One driveway—that is, if we can call it a driveway, because the limits are not clearly marked—the socalled north driveway—that is north of the store—is almost at the intersection of 21 and 176, and possibly might be considered to be about 100 feet wide, that cars can egress over a hundred foot area—at least over at the north side of the store—that is north of the store. There is a driveway south of the store. Whether that is in line with Mr. Ekers' property or whether it is a joint [fol. 65] driveway used by a group of business houses—separate establishments—which are located just south of Mr. Ekers' buildings—there is a land gap between those two sets of buildings, and there are additional driveways which everybody uses. They use Mr. Ekers' driveway from north to get to the tavern, and use the tavern driveway on the south and drive up to Mr. Ekers' store.

The Court: Is this on the southeast corner?

The Witness: It is on the south side of the store. The store is on the east side of the highway, route 21.

The Court: It would be the southeast corner of the intersection?

The Witness: Yes, southeast of the intersection so it is possible for cars—and the way they drive they use that entire fifty feet both for driving, parking and walking. People coming across the highway to go to the tavern will cross the intersection with the light and then walk right along where the cars generally drive to get to the place, and use that as a walk. There is no walk as such, it is just plain dirt—it is not not paved or black-topped or anything like that—it is just dirt. And the curb isn't very distinct there. It is a main highway and the didn't put up a curb like they would ordinarily do in a residence. And our people generally walked somewhere in this driveway or in front of the store, but it's still about fifty feet away from it—within the so-called 6 or 8 foot distance from what would be the curb line on whose ever property that might be. And, generally speaking, it has been my obser-
[fol. 66] vation any time I have been out there, I haven't seen more than two people covering that whole stretch, picketing at the same time. There have been others who have been there for relief purposes—they might either sit in a car which is parked off the highway or they may be up in the tavern—but we prefer them not to go in there——

The Court: But, in any event, they were parked on Ekers' property?

The Witness: I don't know whether they were parked on Ekers' property. This is the first we have been notified—first we have ever heard that this is Ekers' property. I know it has been our policy that whatever law authorities that would police that area—that we could talk to and find out, you know—just how we could dispose our pickets without being in violation of any particular ordinance that might apply—but we weren't able to find anybody to talk to there except the State police; and the Sheriff's officers came by there every day and have had no occassion to warn us or to order us off that property at any time.

* * * * * * *

[fol. 67] Q. Mr. Pollock, between Highway 21 and the locker at West Richfield there is a light pole or telephone pole there. Do you recall?

A. Yes.

Q. Your strikers have been parking a car right beside that pole.

A. Between the pole and the curb.

Q. Between the pole and the curb,——

A. Yes, that is right.

Q. And between the curb and Mr. Ekers' place of business, right?

A. Between the curb and that pole.

Q. All right. And that you have been carrying a sign on that automobile, a sign "On Strike" on both ends of it, haven't you?

A. I have been there and seen the strike sign on both ends of the car.

Q. That automobile is parked there constantly, all day long, with that sign?

A. Whoever is picketing generally has their car parked there.

* * * * * * *

[fol. 68] Q. This car is parked in front of Mr. Ekers' place then, you say?

A. Yes, it is substantially in front of Mr. Ekers' place, between the pole and curb.

* * * * * * *

Q. The pickets leave the car and march up in front of Mr. Ekers' place at the two entrances that you have described?

A. The pickets generally picket further down where there is a highway—that is a drive—picket further down. But generally somewhere between the pole and the curb.

Q. Yes, and at a spot where vehicles customarily come in and out to go to Ekers' place.

A. There's not any spot on that property you can stand [fol. 69] where vehicles don't come in and out—not one spot.

Q. So you marched back and forth approximately how many feet in doing your protesting here?

A. I wouldn't know how many feet they marched up and down, but generally we wanted them to walk—keep walking, you know. It might be a distance of 200 or 300 feet

to try to cover that area. I mean two people. Generally, that's about all that have ever picketed at one time so far as—there have been times when we had them on the other side, you know—another driveway. But generally speaking, only two.

• • • • • • •

Q. Ever ask Mr. Ekers for permission to park this car and do that work you are doing out there?

A. We never asked permission of Mr. Ekers to park our car there.

Q. That car isn't parked there as a customer of Mr. Ekers?

Mr. Riemer: Which car?

A. With that sign on it?

Q. Yes.

A. No. That's one of the picket's cars—one of the strikers.

• • • • • • •

[fol. 70] Q. You don't know whom it belongs to, do you?

A. No.

• • • • • • •

The Court: And you have made no investigation to ascertain whose property it is?

A. No.

Q. Do you know a Thomas Tandarich?

A. Yes.

Q. Is he one of the picketers?

A. He is a member of our Union on strike and picketing.

Q. Do you know where *is* is now working?

A. I didn't know that he was working.

Q. Do you know that he had resigned his position at Ekers?

A. No, I didn't know that he had resigned.

• • • • • • •

[fol. 71] Q. Do you know Donald Herbruck?

A. Yes.

Q. Is he a member of your Union?
A. Yes, he signed an application.
Q. Is he a striker?
A. He is on strike.
Q. Is he a picket?
A. I don't know.
Q. Do you know that he resigned his job at Ekers?
A. I think I heard him say that he had signed a paper before he came out, but what that paper is or what he signed I never saw.
Q. Before he came out?
A. He told me he signed a paper before he came out.
Q. When did he come out?
[fol. 72] A. I don't recall the exact date.
Q. Was it before March 6th?
A. It could be.
Q. Do you know Walter Carpenter?
A. Personally, no.
Q. Is he a member of your Union?
A. Yes.
Q. Is he a picketer?
A. Not to my knowledge.
Q. Was he formerly employed at Mr. Ekers?
A. I saw his name on Mr. Ekers' payroll.
Q. Do you know that he resigned as an employe of Ekers?
A. No.
Q. Do you know Mr. S. P. Speece?
A. No.
Q. Do you know the gentleman?
A. Not personally.
Q. Do you know whether or not he is picketing?
A. Not to my knowledge.
Q. Is he a member of your Union?
A. To my knowledge he has signed an application authorizing the Union to bargain for him.
Q. Do you know that he has resigned from his job at Ekers?
A. No, I didn't know that. I have no knowledge of it.
Q. Have you ever conferred with these people—Speece, Tandarich, Carpenter, Herbruck—since you resumed picketing?

A. Yes, I have conferred with Tandarich and Herbruck, those two.

Q. Those two told you they had resigned from their jobs, didn't they?

A. They told me they signed some sort of a paper that they were asked to sign. I never saw the paper, I never had an accurate description given.

Q. Do you know Tandarich's signature when you see [fol. 73] it?

A. No, I wouldn't know his signature if I saw it.

* * * * * * *

THOMAS TANDARICH, called by the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Denlinger:

* * * * * * *

[fol. 74] Q. Where have you been working?

A. Eckers Packinghouse Market.

* * * * * * *

Q. I will hand you what has been marked for identification as Plaintiff's Exhibit 5. Is that your handwriting?

A. Yes, sir, it is.

Q. Did you read that before you signed?

A. Uh huh.

Q. What did you intend to do upon signing that? To resign your job there? Is that what you intended to do?

A. Yes, sir.

Q. All right. These two men whose names are mentioned there, were they present when you signed it?

A. Yes, they were.

Q. You are no longer employed by Ekers, are you?

A. No.

* * * * * * *

[fol. 75] JAMES DOUGHERTY, called by the plaintiff, being first duly sworn, testified as follows:

Cross-examination.

By Mr. Denlinger:

. . . . . .

Q. What is your business, Mr. Dougherty?
A. Business agent Local No. 427.

. . . . . .

[fol. 76] Q. I want to direct your attention to your business card, which is part of the exhibit known as Plaintiff's Exhibit 2-A and 2-B, and that is the business card which you have been using since you became business agent in June, 1953, is that correct?

A. That is right.

Q. Now, will you examine the two sheets representing Exhibit 2-A and those of 2-B and tell the Court if you recognize what this particular exhibit represented.

A. Exhibit 2-B is a typical contract for the retail field in the Akron area which was negotiated in June—or rather, September, 1952. And Exhibit 2-A is the result of the wage re-opener we had in 1953.

Q. Now, will you tell the Court if you have seen this particular exhibit before, and if you are the gentleman that left them with Mr. Ekers for his consideration?

[fol. 77] A. Yes, I did.

Q. Do you recall approximately when you did that, as near as your memory will serve you.

A. I would say the latter part of August or early September.

. . . . . .

the first time I was in Ekers' establishment Mr. Ekers wasn't there.

. . . . . .

[fol. 78] Some three or four weeks after that I stopped in the Ekers establishment in Tallmadge, and at that time I met Mr. Ekers for the first time.

. . . . . .

Q. Didn't talk about the contract any more than you reminded him that it had been left for him to consider, is that right?

A. Right.

Q. At that time, Mr. Dougherty, how many members did you have in your Union—of employees of Ekers.

A. Those records were not at my disposal. I knew there were some members of our- working for Ekers.

Q. Do you know how many?

A. Off hand I couldn't tell you exactly.

Q. Could you give any idea?

A. These two girls I mentioned were members. And there were at that particular visit—we were talking about my first visit—there were, I believe, four on duty at that [fol. 79] time.

Q. Do you know how many employees he had all together?

A. I didn't.

Q. Do you know whether at any time since you first talked to them, your Union represented by way of actual membership in your Union, or by way of authorizations, a majority of the employees?

A. The only time I really had any idea how many members of ours were in there was at our hearing before Judge Wanamaker.

Q. And prior to that time you had never ascertained what your membership was?

A. Exactly how many there were, no, sir.

. . . . . .

[fol. 80] Q. Do you know what is his scale of pay there?

A. Completely, no, sir, I don't.

. . . . . .

Q. Did you have, as business agent, a signed complaint from a single employee regarding Mr. Ekers' employment?

A. Oh, yes, I did——

. . . . . .

Q. From whom?

A. Well, from at least one I do recall.

Q. Who was it, this one that you recall?

A. Well, when you go into stores you do hear rumblings now and again of dissatisfaction.

Q. So this was on an occasion when you visited one of the stores, is that right?

A. Yes, it was.

Q. Do you remember what store it was?

A. It was in Tallmadge.

Q. Do you remember who the person was?

A. No, sir, I don't.

Q. Did she give you her name?

A. Let me see if I can recall—on one and another——

Q. Maybe it will help you. Let me ask you this: Did [fol. 81] you make a grievance out of that conversation—prepare any grievance or at any time take up with Mr. Ekers this complaint that you are telling us about?

A. No, sir.

. . . . . .

Q. What were the terms of the contract?

[fol. 82] A. Exhibit 2-A and 2-B.

Q. That was the contract your Union was insisting upon. Is that the contract?

A. That is the general contract throughout the area, yes, sir.

Q. That is the contract that all employers sign, is that right?

A. Yes, sir.

Q. So that we might very properly say to this Court, so far as your Union is concerned, that is the contract, or otherwise your Union don't agree upon a contract. Isn't that correct?

A. Well, sir, don't forget, he was my first effort, and whether there was going to be any modifications of that contract I couldn't definitely answer yes or no.

Q. What I am trying to find out is this, Mr. Dougherty, Exhibit 2-B is the standard contract for your Union?

A. Yes, sir.

Q. Which you negotiate with all employers, with only slight modifications with any particular employer, is that correct?

A. Generally speaking, yes.

Q. In other words, by virtue of this kind of agreement you attempt, as far as possible, to standardize the rates and hours and all of the conditions for all employers, in accordance with 2-B. Right?

A. True.

Q. Now, among those requirements is the Union shop, is that correct?

A. That is one of the requirements, yes, sir.

Q Will you tell the Court whether or not you have a conversation with Mr. Ekers at any time in which the subject of his employees belonging to the Union, or not belonging, was discussed?

A. Yes, I believe it was discussed at one of the Cleveland [fol. 83] meetings. Mr. Ekers made the statement that he would be there, he was worried because if he did sign that contract he may lose some of his personnel.

Q. And what did you and Mr. Pollock say, if anything, about that?

A. As I recall, Mr. Pollock's answer was just this: that they have been presented with a problem like that before on initial contracts with a new employer, and his statement was just this: "We have yet to see an employer lose a man." That was it.

Q. "We have yet to see an employer lose a man".

A. Right.

Q. In other words, when once an employer signed this kind of an agreement with the standard union shop clause in it, the practice, from your experience, is that everybody that has not been members of the Union becomes members of the Union. Is that your practice?

A. Yes.

Q. I mean, not your practice but your experience?

A. Yes.

* * * * * * *

[fol. 84] Q. How many employees of Mr. Ekers would you say were present at this meeting?

A. I don't know, sir.

Q. Did you see any of them?

A. We have had Ekers' employees at meetings, but

whether there were any at that particular meeting or not, sir, I couldn't say.

Q. Directing your attention to that particular meeting, and without going into the various items of business that your membership may have conducted on that occasion, will you tell this Court whether or not at that time a strike was authorized by the officers at Ekers' place of business?

A. To answer you simply and briefly: yes.

. . . . . .

[fol. 85] Q. No. I'm sorry—The meeting was February 2nd, you stated. Meeting the 2nd, meeting night of your Union. On the 3rd you and Mr. Pollock met Mr. Ekers at the office of the Union in Cleveland. Is that correct?

A. Right.

Q. Can you tell us what was said on that occasion by the parties who conferred at that time?

A. Yes. Of course, you might say a continuation of our efforts to get Mr. Ekers to recognize us as the sole bargaining agent of his employees. And Mr. Ekers knew that we had met and met and met again, and we still hadn't culminated anything at all. And as I do recall, Mr. Ekers said definitely that he did not want to negotiate a contract right now.

. . . . . .

[fol. 86] Q. What did he say on that occasion regarding his employees not wanting to join the Union?

A. Much the same as was said just a moment ago. He talked about these people who didn't want to join the Union and he felt that he might lose them.

Q. So it was on various—more than one occasion and prior to February 3rd, that he did advise you, as business agent for this Union, that the union shop clause was giving him difficulty in arriving at what he should do toward your negotiation, is that right? That that subject was bothering him as to how to handle it?

A. It may have been bothering him, sir, but I don't think it was his main worry.

Q. What I am trying to have you tell us, if it happened, is that that subject was discussed and brought to your

attention on more than the one occasion prior to February 4th?

A. Yes. The conversation on that, sir, only took just a few seconds to start and complete.

. . . . . .

[fol. 87] Q. Did he at any time offer you any opposition whatsoever to discuss with his employees, on company time and company property, the opportunity of joining the Union?

A. No, sir.

Q. He gave you free access to his employees for that purpose?

A. Uh huh.

Q. Will you tell me, or tell the Court, with that opportunity and access to the employees at their place of work, how many employees you signed up of Mr. Ekers for membership in your Union?

A. West Tallmadge, we signed up nearly all the employees at the West Tallmadge store—I'm wrong; excuse me—West Richfield.

Q. How many is that?

A. Off hand I would say five or six.

Q. Five or six at West Richfield?

A. Right.

Q. How many signed up at West Market?

A. West Market I had signed up three.

Q. You have their cards?

A. Oh, yes, sir.

Q. Are they now out on strike?

A. No, sir.

Q. Are they back to work at Ekers?

A. Yes, sir.

Q. So everybody at West Market Street, or all who worked there, the three who signed up for membership are not now on strike but still employed by Ekers?

A. Right.

Q. What did your efforts result in at Tallmadge?

A. I signed up a number.

Q. How many at Tallmadge?

A. One day in particular I signed up four. How many

[fol. 88] were members I don't know, all together, as I said before.

Q. So, all in all, you signed up five or six, we'll say, at West Richfield; three, was it, at West Market?

A. West Market.

Q. That's nine. And four or five at Tallmadge?

A. Tallmadge, right.

Q. Making a total of fourteen. Is that correct?

A. That's not counting the members who Mr. Ekers had already employed who were already members.

Q. You didn't have any paid-up members at any of these stores at the time you began this, did you?—When you talk about members at Ekers, you are telling the Court at one time or other in the life of these particular people, working for a certain employer, they had joined the Union. Isn't that what you mean?

A. Right.

Q. You didn't have a signed-up member at Ekers at the time this strike started, did you?

A. That I have no way of knowing, sir. I am not the secretary-treasurer. But I might answer that in this way: Ekers' employees had attended meetings after I had become business agent.

Q. You never at any time considered you had as members of your Union a majority of Ekers' employees, did you?

Mr. Riemer: I object to that.

The Court: He may answer if he knows. Do you know how many employees Ekers had?

A. No, sir, I don't.

[fol. 89] The Court: Sustain the objection.

Q. Now, you started picketing at these various stores on the 4th of February this year—I think is the date we have already agreed upon here.

A. Right.

Q. Did you join that picketing that morning?

A. Yes, I did.

. . . . . .

Q. Would you say around five o'clock in the morning?

A. About that; yes, sir.

Q. Do you know what time the store opens?

A. The store opens, I believe, around eight—eight-thirty.

Q. What was the purpose of you going to picket Tallmadge at five o'clock in the morning?

A. Some of Mr. Ekers' employees get there, we understook prior to the strike, before five o'clock in the morning.

Q. Also deliveries are made before the store opens in the morning, are they not?

A. Well, primarily our reasons was the men, that I had talked to just the night before, was going to work that morning around five o'clock.

Q. Were you going out there to meet these men or to keep them from going to work?

A. To ask for their support.

Q. You were going there to ask them not to go to work, weren't you?

A. To ask for their support.

Q. By "support" you mean you didn't want them to go to work?

A. Yes.

• • • • • • •

[fol. 90] Q. Now, will you tell the Court generally the places around the Tallmadge store and vicinity in which you saw the pickets operate, as they picketed from the 4th day of February to approximately including the 11th of February—tell us the vicinity and what they did in this general way at Tallmadge.

A. Well, when we had enough pickets, the usual pro-

[fol. 91] cedure was two pickets at each entrance.

Q. Yes?

A. And they were relieved either once every hour or once every half hour, depending on the weather. When the pickets were few, we only had two or three pickets, we would put one picket on line and that one picket would walk in the five or six foot stretch between the street and the area we had assigned to us—from one driveway to the other.

Q. How about the driveways themselves? Didn't you——

A. Driveways themselves when the pickets were very,

very few—only one pick ' started at one driveway, walked to the other one—some 300 feet—and back again.

Q. Didn't you, as a rule, have two pickets walking back and forth across the driveway?

A. When we had ample pickets there that was the procedure, yes.

Q. And how far from the curb line of Tallmadge Avenue, or the street line—I am talking about now where the street comes up to the edge of the dirt—how far from that curb line was this imaginary line known as the picket line—was the picket line drawn that was traversed by the pickets? How far back from the street line?

I would say 6—7 to 8 feet. I would say about 7 feet, possibly.

Q. That would be 7 feet from the street in the direction of Ekers' store itself?

A. Right.

. . . . . .

Q. Listen to my question, Mr. Dougherty. Do you know whose property you were picketing on?

A. No.

[fol. 92] HARVEY EKERS, called by the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Denlinger:

. . . . . .

Q. How long have you lived in this County?

A. Summit County approximately thirty years.

Q. And during those thirty years in what occupation have you been engaged?

A. Meat business?

. . . . . .

Q. You are presently engaged in what business?

A. Meat business.

Q. And do you carry your operations through a corporation?

A. Yes, sir.

Q. And what is the name of that corporation and where [fol. 93] was it organized?

A. Fairlawn Meats, Incorporated. Organized in Akron, and an Ohio corporation.

Q. Who are its sole stockholders?

A. Nina Ekers and Harvey Ekers.

Q. That is your wife and you?

A. That's right.

Q. Now, tell the Court where you maintain your stores.

A. One store at 278 West Avenue, Tallmadge, and the other one at 2246 West Market Street, and the other one in West Richfield, intersection of routes 21 and 176.

Q. Do those three stores make up the total operations of your company?

A. They do.

Q. Now, chronologically—as to time—when were those stores opened?

A. The West Market store was opened about the first of March, 1951, the Tallmadge store was opened the first of March, 1952, and the West Richfield store was taken over about the first of October, 1953.

Q. Now, taking those stores up in the reverse order that you have mentioned, will you tell the Court whether or not you are the owner or the lessee of the West Richfield store?

A. West Richfield, a corporation is the owner.

Q. That has been purchased outright by the company?

A. Yes, sir.

Q. And is titled in the company and operated by the company?

A. Yes, sir.

Q. What kind of business is customarily done at the West Richfield store?

A. 90 Per cent of the business, approximately, is meat business.

Q. Do you have any other operation there except the [fol. 94] sale of meats?

A. There's locker storage facilities.

Q. So that this building houses a locker storage facility as well as the retail sale of meats?

A. Yes, sir.

Q. Do you do any wholesaling of meats out of West Richfield?

A. I would say that less than 5 per cent of our business at West Richfield is wholesale.

Q. Now, coming to the store on West Market Street, which I believe is located in the building in which Sparkle Market conducted a grocery store, and is approximately at the intersection of West Market Street and Sand Run Road, is it?

A. That's right.

Q. Tell us what is the nature of your business there.

A. One *H*undred per cent meat and allied items, such as frozen fish, because we are leasing in a store where there's groceries—in a super-market. And—pardon me, does that answer your question?

Q. Let me go one step further. You have properly answered it, I think. I want to ask you, do you have—your corporation have—any interest in the real estate at West Market Street?

A. No, sir.

Q. Other than leasing the space in the super-market building?

A. Yes, sir, that is true.

Q. That is the limitation of your interest in the real estate?

A. Yes, sir.

Q. Now let me go back a moment to West Richfield. How many do you normally employ, and how many were you employing, at West Richfield in the operation of that store on the 4th of February, 1954?

[fol. 95] A. There were, I'm pretty sure, seven persons employed.

Q. Seven at West Richfield. These figures we will get exactly from your bookkeeper later.

A. That's right.

Q. Now directing your attention to the West Market reet store, how many were employed there?

A. I might say, going back to Richfield, if I may, on Saturday I would have an extra person, that would make eight employed at West Richfield.

Q. And at West Market Street?

A. At West Market Street we would have approximately

four full-time—five full-time help and two or three part-time—that means less than fifteen hours a week.

Q. Directing your attention now to the Tallmadge, Ohio, store. Is that real estate and building leased by you, or your corporation, or owned by it?

A. It is leased.

Q. And how long a lease do you have for it?

A. I have at the present time a one year lease starting March 1st, with an option of one year.

Q. How many people do you normally employ at Tallmadge?

A. When you say "normally", I would say at the time this trouble developed——

Q. That's a good time to fix it.

A. I would say I had between—around between thirty to thirty-five.

Q. I neglected to ask you the nature of your sales at West Market Street. Are they largely retail, or what is the nature of that business?

A. Ninety-five per cent of them, approximately, would be retail.

Q. When you say wholesale—or sales other than retail—tell to the Court what that 5 per cent of sales represents, [fol. 96] as to the kind of transactions and the people to whom you are selling.

A. It would be restaurant business.

Q. The restaurant business?

A. Yes, sir.

Q. You do not wholesale in the sense of selling meat or any provisions to some other retailer for retail sale to the consumer?

A. Not at West Market Street.

Q. Nor at West Richfield?

A. No, sir.

Q. Now, directing your attention to the business conducted at Tallmadge, will you tell the Court the nature of that business, as to retail sales and other types of sales.

A. There, for one thing, we have a locker plant with a locker capacity of about double the Richfield plant. I do not have the exact figures, but I would say between 60 and 70 per cent of our business would be retail, and be-

tween 30 and 40 per cent wholesale. And when I say "wholesale", principally restaurants.

Q. Out of Tallmadge do you sell to any retailer who purchases from you for the purpose of retailing or making sales over the counter, as you make them over the counter?

A. We do a little bit. We used to do more.

Q. But now the percentage is how small, would you say?

A. I would say our sales of that kind would possibly be about ten per cent.

Q. The balance would be to restaurants and to the consumer across the counter?

A. Yes, sir.

Q. Now, I think in going into the operation of your business the Court might be interested in from whom you [fol. 97] make your purchases. And I would like for you to tell the Court from whom your principal purchases are made.

A. I would say that pretty nearly—approximately between 40 to 50 per cent of my purchases in the last fiscal year were from two Cleveland packers—two large Cleveland packers. The others were——

Q. Now, that is with reference to your meat purchases?

A. Yes.

Q. Now, you purchase fish and fowl and all of that stuff?

A. From maybe 50 different suppliers—wherever we can buy it.

Q. Where are those suppliers located? In what states?

A. Ohio.

Q. You made some purchases that are shipped from outside of Ohio into Ohio, don't you?

A. Yes, sir.

Q. I want you to tell the Court where those representatives of those companies live and maintain their offices.

A. I would say that possibly around 10 per cent of our—10 or 15 per cent of our purchases would be made from concerns outside of the state. And when I say outside of the state—their representatives would have local representatives that call on us, as far as us buying direct——

Q. Tell the Court how those purchases were made and where made and how they're handled and how paid.

A. Salesmen call on out and salesmen collect for it.

Q. Do you know, from checking your bank account, where the checks for these purchases for shipments outside of the state—where they are deposited?

[fol. 98] A. In Akron in local banks——

Q. In local banks in the name of these particular shippers, is that right?

A. That is right.

Q. How much are your total sales a year—or purchases?

A. Purchases or sales?

Q. Let's put it purchases.

A. I would say between three-quarters of a million and a million dollars.

Q. $750,000.00 to $1,000,000.00?

A. Yes, sir.

Q. And you will say to this Court that not to exceed $750,000.00—or excuse me—not to exced 10 to 15 per cent of those total purchases are made outside the State of Ohio, in the respect of being shipped from outside of the state, although purchased within the state?

A. I would say 15 per cent would cover it, yes.

* * * * * * *

Q. Will you state to the Court whether or not at any time in the last three years, or since the incorporation of your company and the beginning of your operations as Fairlawn Meats, Incorporated, have you at any time had a single dispute or controversy with any employee that you have had, regarding their wages, their hours or other conditions of employment?

A. Well, I have had differences of opinion in one or two cases over those three years, and as a result in possibly one case the party left my employ and went to somebody else's employ. And we are the best—in both those cases that I can think of—we are on the best of relations—[fol. 99] they felt they could do better elsewhere, and they went.

Q. Have you at any time since the inception of this company ever been requested by any business agent or Union representative to handle a grievance for any employee in your employment?

A. No, sir.

Q. Did you on the 4th of February have a dispute of any kind regarding wages, hours or conditions with any employee of yours at that time?

A. No, sir.

Q. Did any employee or business agent on the 4th of February, 1954, or immediately prior thereto, complain to you about any grievance of any kind regarding their employment?

A. No, sir.

Q. Now directing your attention to the 3rd of February, 1954, did you meet in the office of the defendant Union in Cleveland and have a conversation with Mr. Pollock and Mr. Dougherty?

A. Yes, sir.

Q. You have heard both of these gentlemen testify regarding that conversation?

A. Yes, sir.

Q. You heard their testimony. I want to ask you whether or not you recall of having brought to the attention of Mr. Dougherty and Mr. Pollock—and previously to Mr. Dougherty's attention—that you feared difficulty in retaining your employees because of the union shop clause of the contract?

A. Yes, sir.

Q. You told them that?

A. Yes, sir.

Q. And what is the fact, had you discussed with your employees whether or not they wished to join the Butchers [fol. 100] Union?

A. I don't know just how to answer that question. The question that did come up was the question of whether they wanted me to sign a Union contract——

Q. Whether the employees wanted you to sign a Union contract?

A. —which would force them to belong to the Union.

Q. Did you ask them that question?

A. Yes.

Q. What did they tell you they wanted you to do?

A. I never had one employee tell me they wanted me to sign such a contract.

Q. Not a single one?

A. Not a single employee.

Q. Now directing your attention to the 4th of February, 1954—that is when the picketing began at your various stores, is that correct?

A. Yes, sir.

Q. Now, what was the result of that picketing with reference to your being able to get deliveries at your stores through the picket lines of the normal truck deliveries?

A. Ninety per cent or more of the deliveries were stopped. Any delivery, I suppose, that had Union drivers wouldn't go through the picket line.

Q. What did you have to do in order to maintain the supply of merchandise for your stores?

A. I went and picked up the meat—either I or my employees had to go and haul the meat and other supplies in ourselves.

Q. And you did cross the picket line, of course?

A. Yes, sir.

Q. I want you to tell the Court your experience coming from Cleveland, and other places, in acquiring the mer- [fol. 101] chandise with which to do business. What happened to you with reference to your use of the highways?

* * * * * * *

Q. Take the Cleveland incident, when the police gave you escort there. Tell the time and details of that transaction.

A. I can't tell the date.

Q. What month was it? Was it before——

A. It was after the picketing had resumed.

Q. After the picketing had resumed?

A. Yes.

Q. So that it would be sometime after the 6th of March?

A. Yes, sir.

Q. And during the month of March?

A. Yes, sir.

Q. All right, go ahead and tell us with reference to that.

A. I went in to Swift & Company, I drove in there and there were two Union agents on the dock. I was told that

they were making an effort to keep me from getting supplies.

Mr. Riemer: Will you identify the Union agents?

The Witness: Mr. Samino and Mr. DeSantis. When I found——

Q. Were they employees of Swift & Company?

A. No, sir.

Q. They were business agents of this Union that you had previously become acquainted with in their efforts to get you to sign this contract?

A. Yes, sir. When I found this out I went upstairs to the sales manager of Swift & Company and told him what I thought was going on. He says, "We won't go for anything like that. That's collateral boycotting." That's the [fol. 102] statement he made to me. And I have since continued to get merchandise from Swift & Company.

Q. Just what happened when you left?

A. I left from there——

Q. What route did you take?

A. It's only about one block from Swift & Company to my next stop at the Peerless Packing Company. I pulled up to the dock and the two Union agents pulled up—they weren't fifty feet away from me.

Q. Before you go any further, are these two gentlemen in the meat business?

A. No, sir. They're Union agents.

Q. Go on.

A. I left my truck sit there and went into the Peerless cooler and came back out, and found my rear tire flat.

Mr. Riemer: It may be interesting that the tire was flat, but unless it is by the defendants——

The Court: It is a circumstance for the Court's consideration. Circumstantial evidence in this case is as applicable as in any other. Go ahead.

The Witness: Might I mention at this time that I hadn't got back from Cleveland an hour before I had another flat tire.

Q. What happened on the way home?

A. When I left Peerless—which I wasn't able to buy any meat from Peerless, they said the Union had prevailed on

them not to sell me and they wouldn't even let me haul it. I was followed for about five miles by these same two Union agents. At the corner of Brookpart Road and Broadview Road in Cleveland there was a traffic policeman directing [fol. 103] traffic. I pulled up where he was, and the two Union agents trailing me had to go around me. I told the policeman the situation. He said there wasn't too much he could do. He said when I get back to Akron I should notify the Akron police. I took the trouble to get the policeman's badge number and also the license number of the car trailing me.

Q. But the two occupants of that car you positively identify in this court as DeSantis——

A. And Samino. And following this little episode in Cleveland, when they passed me they had to turn on a side road. I was able, when I had the light, to go down Brookpark Road and elude them. I saw nothing more of them.

Q. Is this the only occasion you met with this kind of experience, being tailed?

A. No, sir. I was followed lots of times but was usually able to throw them off in a short time.

Q. How about going to and from your home to your place of business?

A. They never followed me from my home to my place of business.

Q. It was getting the merchandise to the store?

A. Yes.

* * * * * * *

[fol. 104] Q. The Peerless Packers is the one place you have just outlined, where DeSantis and the other business agent were present, that they refused to even sell you meat for delivery which you would haul away to your place?

A. That's right.

Q. What other packer has given you the same kind of treatment?

A. Earl C. Gibbs, Incorporated.

Q. And how long did the situation continue there with Mr. Gibbs that he wouldn't sell you any merchandise?

A. Up until about ten days ago.

Q. And is it from these two packers that you purchase

normally the greater portion of the meat of that class for sale in your business?

A. Our purchases were probably around the three-quarter million mark from Peerless, about 180 thousand to 190 thousand from Peerless, and 235 thousand from Earl C. Gibbs our last fiscal year. Those are the approximate figures.

. . . . . .

[fol. 105] Q. Let me take you back, Bert, to the property at West Richfield for a moment. How much frontage do you have in that location?

A. 200 feet.

Q. That is property that is wholly owned by the Company?

A. That's right.

Q. The frontage is 200 feet on Route 21, abutting Route 21?

A. Well, the two come together—21 and 176. It's on both roads.

Q. And on that 200 feet frontage there has been erected a block and cement house, is it, or storeroom?

A. Yes.

Q. The West Richfield location is in what county?

A. Summit.

Q. Is it in any incorporated village or is it out in the county?

A. It's in the county, I understand.

[fol. 106] Q. Well, there's not any question—there is no village there, is there? There is no incorporation?

The Court: Richfield Township, isn't it? Part of it is Richfield Township?

Mr. Denlinger: Yes.

The Witness: Yes.

Q. Do you know where the picketing has been going on at West Richfield with reference to this 200 feet or property fronting on——

A. Yes, sir.

Q. Tell the Court where that picketing is.

A. I have been there numerous times and the pickefing usually is anywhere from 10 -15 feet from the——

Q. Curb?

A.—curb, from the edge of the pavement.

Q. On whose property is that being done?

A. Our property.

Q. On your property. Have you noticed this parked car out there, with the picket signs in the front of the car and the back, parked there all day long?

A. That car, or cars, with these signs on have been there for a period of six or eight weeks.

Q. On whose property is that car parked every day?

A. On ours.

Q. Are the occupants of that car customers of yours that they park there all day long for the purpose of buying anything?

A. Not that I know of.

Q. Did they ever buy anything to your knowledge?

A. Not that I know of.

Q. Directing your attention to the Tallmadge, Ohio, store, will you tell the Court how much frontage there is [fol. 107] on that leased property?

A. About 285 feet.

Q. About 285 feet, and tell the Court on whose property the picketing has been going on there

A. Our property.

Q. On your property—property you lease?

A. That's right.

Q. They aren't picketing in the highway?

A. No, sir.

Q. How many feet from the curb are they picketing, normally?

A. I have seen them picket anywhere from 3 feet to 20 feet.

Q. 20 feet towards the store from the road?

A. Yes, 20 or 25 feet.

Q. Now, did you ever tell them to get off of either one of these properties?

A. I told them to get off the morning of the strike. I was the one that opened up the store the morning of the strike and told them to get off. I haven't talked to them since this.

Q. That was the morning of February 4th. You told the

pickets, including Mr. Dougherty, who was on the stand, did you not, to get off your property?

A. I told all the pickets who were there—and there was a tremendous amount of them——

Q. How many were there?

A. Oh, the first morning, 20 or 25—I don't know whether you would call them pickets, but they had 20 or 25 people on the property at the time I drove up to open the store.

* * * * * * *

[fol. 108] Q. With reference to the West Richfield property, when did you tell these people to get off?

A. I had no conversation with them there.

Q. You at no time have told the West Richfield pickets to get off?

A. No. I had one incident when I was talking to one their—May I amend that answer? There was one incident when I was talking to one of their members and one of their business agents came up, and I told him he was trespassing on our property. He said he didn't care, he represented the man I was talking to.

Q. Who was that agent?

A. Mr. Kabor—Koeber. These folks know who I mean.

* * * * * * *

Q. Who was the man you were talking to?

[fol. 109] A. Delbert Brown.

Q. Who is he?

A. He is the man that the attorney here said is the captain of their pickets there, but he lives up above our property.

Q. He lives in your house there?

A. Yes, sir.

Q. Wait! Do I understand, Bert, that the captain of the pickets, that are picketing your West Richfield store, lives in the apartment above the store at West Richfield?

A. That's right.

* * * * * * *

[fol. 110] HARVEY EKERS, called for continued examination, having been heretofore duly sworn, testified as follows:

Cross-examination.

By Mr. Riemer:

Q. Mr. Ekers, will you tell us when Fairlawn Meats, Inc., was incorporated?

A. Around within a month or two of January 1st, 1950.

Q. Now, as of the time that the strike started on February 4th, 1954, the corporation owned the property at West Richfield, did it not?

A. Yes, sir.

Q. And you leased the property at Tallmadge?

A. Yes, sir.

Q. And you leased space in the Sparkle Market on West Market Street?

A. Yes, sir.

Q. What space did you lease in the market—that is, the Sparkle Marklet, on West Market Street?

A. We leased a space between 25 and 30 feet wide on the east side of the room.

. . . . . .

[fol. 111] Q. Of course, your customers and patrons have the right to use parking space in the area which is outside of the store and runs from the store to the curb line?

A. Yes.

Q. And is it not also a fact that on West Market Street pedestrians customarily—traffic up and down West Market Street—passed the Sparkle Market?

A. Well, very few.

. . . . . .

Mr. Riemer: Are you raising any issue about trespass at West Market Street, Mr. Denlinger?

Mr. Denlinger: No, we are not.

. . . . . .

Q. Now, coming down to Tallmadge, that is property that the plaintiff corporation owns, is that a fact?

Mr. McGowan: Leased, he said.

Q. At Tallmadge you leased?
A. That's what I said.
Q. What property is covered by your lease?
A. My understanding, it goes to the center of the road.

. . . . . .

[fol. 112] Q. Now then, on that property is there a curb?
A. No, sir.

. . . . . .

Q. Now, Mr. Ekers, this photograph, Plaintiff's Exhibit 3, would seem to indicate—at least to me—that there is no established sidewalk.
A. That's right.
Q. In the sense that you have a gravel or concrete pavement.
A. Yes, sir.
Q. Do you know from your own observation and knowl-
[fol. 113] edge where pedestrians walk along Tallmadge when they traffic up and down there?

. . . . . .

A. The very few pedestrians that there are usually walk on the—on our strip just inside the street—just off of the pavement.
Q. That would be in this area shown in Plaintiff's Exhibit 3?
A. Yes, sir.
Q. Just at the or off the curb line?
A. Yes, sir.
Q. And would you say, Mr. Ekers, that the individuals
[fol. 114] shown in this photograph are approximately in the space normally used by pedestrians when they walk along that strip?

. . . . . .

A. I would say the big majority of the pedestrians would stay a lot closer to the curb than your pickets are. That is normal procedure.

. . . . . .

[fol. 115] Q. Now, again drawing your attention to this area in front of your market on Route 21, what is the practice or custom engaged in by pedestrians when they traverse north and south along Route 21 in front of that property? Where do they walk?

A. The same as any other highway—walk as close to the curb as they can, off of the pavement.

Q. But they don't walk on the highway, do they?

A. Not many.

. . . . . .

[fol. 116] Q. Mr. Ekers, what I am directing your attention to now are your purchases of cattle—beef or beef from cattle as distinguished from pork and other products of that nature. And I would like to know the source of those purchases.

[fol. 117] A. In the first place, I buy no cattle. You asked me that,

Q. What do you buy?

A. I buy dressed beef.

Q. Where do you purchase your dressed beef?

A. I purchase it from a number of sources.

. . . . . .

Q. Perhaps I can help you. You do purchase your dressed beef from Peerless, do you not, in Cleveland?

A. I purchase some of it, yes. I did purchase it.

Q. Aren't you purchasing it now?

A. No. They stopped me.

. . . . . .

[fol. 118] Q. Do you make any purchases of dressed beef from any packing companies outside of the State of Ohio?

A. I don't believe I did in 1953.

Q. Would your books and records show whether you did in 1953?

A. Yes.

Q. Have you purchased any dressed beef from outside the State of Ohio from January 1st, 1954, down to date?

A. No, sir.

Q. Do you know of your own knowledge, Mr. Ekers, the source of the cattle sold to you as dressed beef——

A. No, sir.

* * * * * * *

[fol. 119] Q. Without going through each entry you have on here, Mr. Moyer—and I see numerous other suppliers—can you give us the total gross purchases for that fiscal year from all the suppliers you have listed on Defendants' Exhibit 6-a to -L?

A. According to our auditor's statement, $873,976.23 for the fiscal year 1953.

The Court: Does that include all meats?

The Witness: That includes everything—meats, cheese, poultry.

* * * * * * *

[fol. 120] EUGENE B. MOYER, called by the defendant, being first duly sworn, testified as follows:

Cross-examination.

By Mr. Riemer:

Q. Mr. Moyer, you have already stated your address. You are employed by Fairlawn Meats, Inc., plaintiff in this action?

A. I am, sir.

Q. In what capacity do you serve?

A. Office manager and manager of the West Richfield plant.

Q. How long have you held that position as office manager, Mr. Moyer?

A. About a year and a half, sir.

Q. And in the capacity of office manager do you keep the books of the corporation?

A. I do, sir.

[fol. 121] Q. And you are familiar with the internal operations of the plaintiff corporation?

A. Yes, sir.

Q. Purchases?

A. Yes, sir.

Q. Source of purchases?

A. Yes, sir.

Q. Pursuant to a subpoena served on the corporation have you brought with you certain books, records and documents?

A. I have, sir.

Q. Do you have them?

A. I have the general ledgers.

Q. What is that document you hold in your hand?

A. I have some figures here, purchases of fiscal year.

Q. Where did those figures come from?

A. General ledger.

Q. Were those figures jotted down for the purpose of this examination?

A. Yes.

Q. The document or pad you hold in your hand is not a regular office document?

A. No, sir.

The Court: Not the original?

The Witness: No.

Q. But they are entries taken from your books?

A. That is correct, sir.

Q. And transcribed on that pad for the purpose of your testimony?

A. Yes, sir.

Q. And the books from which you have taken those figures are in court?

A. They are, sir.

Q. Now, Mr. Moyer, did you use the fiscal year of June, 1952, to June, 1953?

A. I did, sir.

Q. Are all the figures based on that fiscal year?

A. Yes, sir.

[fol. 122] Q. You have no figures for the period of June, 1953, to date?

A. No. I did make a comparison on January of this year.

Q. Comparison of what?

A. As far as percentages I made a comparison of January, 1954.

Q. Just the one month of January?

A. Yes, sir.

Q. And as compared to——

A. As compared to the Fiscal year 1953.

Q. Based on the documents which you brought and the entries you have transcribed on that pad, can you give us the gross purchases by plaintiff corporation of dressed beef from Gibbs in 1953? And when I say 1953 I refer to that fiscal year ending. We understand that?

A. $231,634.47.

Q. And of what did those purchases consist, can you tell?

A. Of beef, sir.

Q. Dressed beef?

A. Yes, sir.

Q. May I see those figures?——

(Witness indicates.)

—What did you do? Run them off by weeks?

A. Yes, sir.

Q. Just take Gibbs again—Earl C. Gibbs. First entry is $4622.00. Does that represent the first week of the fiscal year?

A. That's right.

Q. And follow right down the line, the various entries represent gross purchases from Gibbs for the successive weeks in that fiscal year?

A. That is correct.

Q. Until you arrive at a total of $231,634.47?

A. That is correct.

(Thereupon the papers furnished by the witness were marked as Defendants' Exhibits 6-A to 6-L inclusive.

[fol. 123] Q. Mr. Moyer, this has now been marked Defendant's Exhibit 6-A to -L. Does this compilation of figures represent the suppliers——

A. They do in the State of Ohio.

Q. —the suppliers of products to the plaintiff Corporation from within the State of Ohio?

A. That is correct.

Q. And you have listed all of the suppliers?

A. We have, sir.

Q. Now, you have told us about Gibbs, and on Exhibit 6-A I see the entry: Swift & Company. Can you tell us the gross purchases from Swift & Company?

A. $91,836.29.

Mr. Denlinger: Is that all beef too?

Q. Was that dressed beef, Mr. Moyer?

A. No, sir.

Q. What else did it consist of?

A. Consisted of pork, veal, lamb, luncheon meats.

Q. I see on Exhibit 6-A the entry: Wilson & Company. Is there a total figure for that?

A. Now, sir, Wilson & Company at that time were located in the City of Akron with a branch on East Market Street, and that's the purchases made from there, $28,330.05.

Q. From the Wilson & Company branch in Akron?

A. That is correct, sir.

Q. Any other purchases during the fiscal year 1953 from Wilson & Company other than in Akron?

A. Yes, through their local representative we purchased $19,166.07.

Q. What is the difference between these two compilations—first, the one on Exhibit 6-A and the second one?

[fol. 124] A. This, of Wilson & Company, they had a branch on West Market Street, and it was closed in February of 1953.

Q. And the second lot of purchases, how were they placed?

A. Through the local representative and shipped out of one of their other plants.

Q. Where were they shipped from, Mr. Moyer, if you know?

A. Well, they have about twelve different plants over the country—could be shipped from any one of them.

Q. Were they shipped from Ohio?

A. I would say not.

Q. You say not?

A. Yes.

The Court: This shipment of Nineteen Thousand and something was made after the Akron branch closed, is that correct?

The Witness: That is correct, sir.

Q. Now, the figures that you gave us previously of $28,330.05 were purchased through the Akron branch?

A. That is correct.

Q. Do you know where they were shipped from?

A. They could have been shipped from any place. In fact, some of that could have been from the State of Ohio, as far as that goes—as far as butter and cheese.

• • • • • • •

[fol. 125] Q. Without going through each entry you have on here, Mr. Moyer—and I see numerous other suppliers—can you give us the total gross purchases for that fiscal year from all the suppliers you have listed on Defendants' Exhibit 6-A and L?

A. According to our auditor's statement, $873,976.23 for the fiscal year 1953.

The Court: Does that include all meats?

The Witness: That includes everything, meats, cheese, poultry.

• • • • • • •

[fol. 126] Mr. Denlinger: That figure $873,976.23 represents all purchases for that fiscal year from the State of Ohio and any shipped out of the state?

• • • • • • •

Q. —can you tell us, based upon this Exhibit 6-A, the total gross purchases of the plaintiff corporation from the suppliers named on this Exhibit 6-A? That is the figure I want.

The Court: Exhibit 6-A to -L inclusive?

A. That is $753,099.94.

Q. Now I think that is correct on the record.

Mr. Denlinger: Yes.

Q. Now then, have you with you any figures showing purchases by the plaintiff corporation from outside the [fol. 127] State of Ohio? Can you answer that question?

A. Through local representatives?

Q. We'll get to that later on. I want to know if you have any figures with you showing purchases by the plaintiff corporation and received from outside the State of Ohio?

A. I have figures here for purchases from units located outside the State, through local representatives, which were delivered to us in the State.

Q. Do those figures show where the supplies came from?

A. No, they don't sir. Only the name of the company.

Q. But it is your testimony that they did come from outside the State of Ohio?

A. That is correct, sir.

Q. And I think you said the sales contract was made here in Akron?

A. That is right, sir.

Q. Now you hand me a two-page document. Do these contain all the figures?

A. They do, sir.

Q. Without going through all the questions I have asked you before, Mr. Moyer, is this document that has been handed to me based upon the entries from your books and was it prepared in the same was that Defendant s Exhibit 6-A to -L was prepared?

A. They were, sir.

(Said document was thereupon marked as Defendants' Exhibit 7-A and -B).

. . . . . .

[fol. 128] Q. Now, Mr. Moyer, again without going through each individual column here—and there are a number of additional columns—would you give us the [fol. 129] gross purchases by the plaintiff corporation, revealed by Defendants' Exhibit 7-A and 7-B, from units located out of the State of Ohio?

A. $103,706.35.

. . . . . .

Mr. Riemer: During recess, your Honor, we had marked two documents. The first is Defendants' Exhibit 8-A and -B.

Q. Mr. Moyer, what does Defendants' Exhibit 8-A and -B represent?

A. State of Ohio purchases from units located in the State of Ohio for the month of January, 1954.

Q. And again, without asking you all the questions I did before, was that document prepared from original book entries in the same fashion as the other exhibits have been?

A. It was; yes, sir.

Q. I notice on here again we have the entries for Swift, is that correct?

A. Yes, sir.

Q. And Armour?

A. Yes, sir.

Q. And Gibbs.

A. Yes, sir.

Q. Is Peerless listed, likewise?

A. I believe so.

[fol. 130] Q. Without going through each individual entry that you have made, Mr. Moyer, can you tell us, based upon this exhibit, the gross purchases for the month of January, 1954, from units located in Ohio?

A. $73,021.63.

Q. What is this document marked Defendants' Exhibit 9?

A. That is State of Ohio purchases from units located out of the State through local representatives, for the month of January.

Q. That is for January, 1954?

A. That's right.

Q. Again, you have listed there substantial- the same suppliers—Marhofer, Wilson, Oscar Mayer and so on.

A. I have sir.

Q. Did you give us the total?

A. $11,870.81.

Q. Now, Mr. Moyer, based upon your experience as an office manager and your observation of the books of the plaintiff corporation, are these purchases for January, 1954, representative purchases?

A. They are, sir.

Q. Would that figure be substantially the same for the other months during the year, down to the present time?

A. I couldn't tell you that, sir. I would say it would be an average.

Q. What about June, 1953—January, 1954?

A. I have the figures but I haven't accumulated them in the same order as I have these.

Q. Would they be substantially the same?

A. I would say they would be, yes, sir.

* * * * * * *

[fol. 131] HARVEY EKERS, recalled for continued cross-examination by the defendants, as follows:

Cross-examination.

By Mr. Riemer:

* * * * * * *

[fol. 132] Q. You testified yesterday, if I can recall your testimony—if my notes are correct—that the Union pre-
[fol. 133] vailed at Peerless not to sell you any products?

A. That's right.

Q. What Union did you refer to?

* * * * * * *

A. I don't know just how to answer the question except to say that I was told by the management of Peerless that they had been threatened by the Union if they gave me any meat.

Q. That is your best answer?

A. That is my best answer, yes, sir.

Q. Who told you this at Peerless?

A. I don't know whether he is an official—whether he is an official at Peerless, but Milton Davis, a salesman.

Q. And you don't know whether Milton Davis is an officer at Peerless?

A. I do know that he is a brother of the president.

* * * * * * *

[fol. 134] Q. Did this union Local 427 have their pickets around the Peerless plant when you were there?

A. They had representatives there.

Q. Who were those?

A. DeSantis and Samino.

Q. When did you see them there?

A. That time and on other occasions.

Q. That is this occasion we are talking about?

A. Yes, sir.

Q. When Milton Davis told you?

A. Yes.

Q. Did you see Samino and DeSantis there that day?

A. I saw them there that day and other times.

[fol. 135] Q. Did you ever talk to them there?

A. I had one very brief conversation with them.

Q. Who was that with?

A. That was with Samino. He and DeSantis were standing there together, and I mentioned the fact of my tire being flat.

Q. That was the conversation you had with Samino and DeSantis about a flat tire?

A. My flat tire, yes.

Q. You don't know what occasioned the flat tire, do you?

A. That is something I am unable to say. I walked into the cooler as soon as I got there and wasn't there to see.

* * * * * * *

Q. Let's go back to this Peerless incident. You were there one day that you talked to Milton Davis, the salesman.

A. Yes, sir.

Q. And is that the only time you saw Samino and DeSantis there?

A. No, I saw them there other times.

Q. You saw them there. Any other occasion?

A. Yes.

Q. But you never talked to them?

A. No.

Q. Except about the tire incident.

A. But I might say, when I went into the cooler they followed me into the cooler—both Samino and DeSantis.

[fol. 136] Q. You don't know what they were doing in the cooler?

A. Just observing whether I made purchases, I assume.

• • • • • • • • •

Q. Do you know whether the Peerless Packing plant on West Sixty-fifth Street is within the territory assigned to business representative Samino?

A. It may be in the territory assigned to them, but I understand that their Union is not the Union that is in at this plant.

Q. The production workers there are in another Union, that is what you mean?

A. That is my understanding, yes.

Q. Now we come down to Gibbs. I believe it was your testimony yesterday that Gibbs refused to sell you any products?

A. Yes, sir.

Q. Did you have a conversation to that effect with any of the Gibbs people?

A. I had conversation to that effect with Earl M. Gibbs, the Vice-President.

Q. And what did Earl M. Gibbs, Vice-President, tell you?

A. He told me his father, who was the President, was in Florida and it was up to him to make the decision. He had been threatened with slow-down or with reprisals—I question whether he said slow-down—but reprisals if he sold, and it was up to him to make the decision. And his decision was that sooner than jeopardize his business he wouldn't sell me.

• • • • • • • •

[fol. 137] Q. Now, this occasion when you say you saw Mr. Samino and Mr. DeSantis at Swift & Company. Yesterday you told us that they followed you? Is that correct?

A. From Swift & Company to Peerless Packing Company.

Q. From Swift to Peerless?

A. Yes, sir.

Q. After you left Peerless did they follow you?

A. They followed me—I don't know whether on that day

I went to Earl Gibbs, but on other occasions they followed me to Earl Gibbs, Incorporated.

* * * * * * *

Q. Did either gentleman, regardless of the day on which it occurred—did either Samino or DeSantis talk to you that day?

A. They talked to me the day of this flat tire incident, [fol. 138] yes, sir.

Q. I am talking about the day you say they followed you to Brookpark and Broadview and there you lost them. On that day did they talk to you?

A. I don't recall whether that was the day of the tire incident or not.

Q. Did they stop you on that day? That is the day you complained to the police.

A. They didn't stop me. I didn't complain to the police; I just told the policeman what was happening. I don't know whether you call that a complaint or not.

Q. At least, on that day you talked to the police, neither Samino nor DeSantis stopped you?

A. No, sir.

* * * * * * *

[fol. 139] Q. You do recognize, do you not, that you do have a dispute with your employees at West Richfield:

A. No, I don't recognize that.

Q. Your employees at West Richfield are on strike.

[fol. 140] A. They're not working.

Q. That's right, and they haven't been working for you since February 4th, 1954.

A. That's right.

Q. Do you know an individual by the name of David Rodocker?

A. I do?

* * * * * * *

A. I know of no dispute between he and I.

* * * * * * *

Q. Do you know an individual by the name of Therom O'Dell—sometimes called Digger O'Dell.

A. Yes.

[fol. 141] Q. And he worked for you at Tallmadge?

A. Yes, sir.

• • • • • • •

Q. Do you recognize his participation in the strike as a dispute with you?

A. No, I don't.

• • • • • • •

Q. Thomas Tandarich was in your employ at Tallmadge?

A. Yes, sir.

Q. He is not working today?

A. No, sir.

Q. He is out on strike?

A. No, sir, he has resigned.

• • • • • • •

Q. Do you know an individual by the name of Don Herbruck, of about sixteen—seventeen years?

A. Yes, sir.

• • • • • • •

Q. He is out on strike?

A. His father told us he *he* wasn't. His father is his [fol. 142] guardian.

• • • • • • •

Q. What about Walter D. Carpenter? Did he work for you at Tallmadge?

A. Yes, sir.

Q. And he joined the strike on February 4th, 1954, didn't he?

A. I wasn't aware of anything of that kind until it was brought out at a previous court hearing. I didn't know the man was on strike until after the court hearing, and I went to see him and he told me he hadn't signed any—

knowingly signed any papers asserting he was on strike [fol. 143] and had given me a letter of resignation.

Q. Is it your understanding that employees sign some sort of a certificate that they are on strike?

A. I only know what the man told me.

Q. And he told you he hadn't signed?

A. He hadn't knowingly signed an affidavit saying he was on strike.

Q. And he gave you a letter or resignation?

A. Yes, sir.

Q. Resignation on what? From the Union or from your employment?

A. From my employment.

Q. Did you ask for a letter of resignation?

A. I don't know whether I did——

Q. Oh, come now, Mr. Ekers——

Mr. Denlinger: Oh, just a minute.

The Court: Sustained.

Q. Mr. Ekers, did you go to see this man Carpenter?

A. Yes, sir, I did.

Q. What was the reason for going to see him?

A. To talk to him about this matter.

Q. To talk to him about the fact he had gone on strike?

A. Or how come he had gone on strike.

Q. Did he or did he not report for work February 4th, 1954.?

A. He wasn't scheduled to report for work February 4th, 1954. He just came in part-time when we needed him; he wasn't a regular employee.

Q. When was the first time he was supposed to be an employee or work?

A. He worked when we needed him, not a regular employee. He never worked over five or six hours a week. [fol. 144] Q. Tell us why you went to see Carpenter.

A. To find out whether he actually was on strike.

Q. And he told you he wasn't on strike?

A. He told me he didn't knowingly sign. I mentioned the fact that you people had an affidavit stating he was on strike. He told me he didn't knowingly sign an affidavit stating he was on strike.

Q. How did this issue of a resignation arise?

A. I don't know how I brought it up—I don't know whether I brought it up or he did. If the question comes to that you can get his version.

Q. I want your version.

A. I don't know whether I brought it up or he did.

Mr. Denlinger: Do you want the letter, Mr. Riemer? Here's the letter with his signature, if you want it.

Q. Did you ask him to resign?

A. I don't know whether I did—I could have but I don't remember whether I did.

* * * * * * *

[fol. 145] Now, after the strike occurred February 4th, 1954, did you, Mr. Ekers, make any home calls or visits to the people who hadn't come in to work?

A. Not that I can recall.

Q. Wait a minute. You did go to visit Carpenter, didn't you?

A. Not at his home.

Q. Let's broaden the question—at their homes or any other place.

A. To the best of my recollection Mr. Carpenter is the only one that I visited, I am almost positive.

Q. Where were the resignations of Tandarich and Herbruck secured?

A. I understand at my place of business.

* * * * * * *

Q. Do you know an individual, Marietta Channel?

[fol. 146] A. Yes, sir.

Q. She was employed at your West Market Street store?

A. Yes, sir.

Q. Did Marietta Channel stay away from work for the period of February 4th to February 11th, 1954?

A. It is not my understanding——

Q. It is your understanding what?

A. That she only was off one day.

Q. That was the day the strike started?

A. Yes. It was my understanding she came back the next day.

Q. She is now working for you?
A. And has been working continuously, yes.

• • • • • • •

Q. Now, on the night of February 1, 1954, did you hold a meeting of your employees?
A. I can't state that that was the exact date, but around that date I did hold a meeting,—I think it was the first, yes —of some of my employees.
Q. Let's try to be definite about the date. There has been some testimony here that the Union held a meeting on February 2nd, and on February 3rd you met in Cleveland with Mr. Pollock and Mr. Dougherty. Now, using those two dates as points of reference, could you now tell us whether that meeting wasn't held on February 1, on Monday?
A. I can only say I am pretty sure it was.
[fol. 147] Q. Where was that meeting held?
A. At Leon's Tavern.
Q. That is in Akron?
A. In Akron, yes, sir.
Q. At what time was it held?
A. Oh, eight to eight-thirty.
Q. And who attended that meeting?
A. About fifteen—approximately about fifteen of our male, full-time employees at Tallmadge—a dozen or fifteen.
Q. Were any of the employees from West Richfield invited to the meeting?
A. No, sir.
Q. Any of the employees from Market Street invited to the meeting?
A. No, sir.
Q. Was David Rodocket at the meeting?
A. To the best of my knowledge he was—yes, he was.
Q. Was Helen Mayo at the meeting?
A. No. I said just males.
Q. You said there was fifteen or so?
A. A dozen or fifteen.
Q. Did you invite all of the male employees at Tallmadge to attend the meeting?
A. No, sir. I invited what I considered my key employees—more the skilled workers.

Q. And in inviting people to attend the meeting at Leon's Tavern on February 1, 1954, did you make any distinction between those who were Union members and those who were not Union members?

A. No, sir.

Mr. Denlinger: Wait a minute——

The Court: He may answer.

A. I don't know who of my employees are Union members.

[fol. 148] Q. You say that at least prior to February 4th, 1954, you did not know who were Union members?

A. I don't know who are paid-up Union members.

Q. Never mind paid-up members; I don't know that myself.

A. It is my understanding, from the constituton, they're not members unless they are paid up.

* * * * * * *

[fol. 149] Q. Let's get back to the meeting of February 1, 1954. Will you tell us the occasion for that meeting and why it was called?

A. Because we were being continually pressed by the Union to sign a Union contract, and I wanted to find out at that date—I had had previous individual expressions from a few of these key employees, and I wanted to find out at that date whether their thinking was still the same on the matter.

Q. At that time, February 1st, there was no strike?

A. No, sir.

Q. The purpose of the meeting was to ascertain from your employees whether the employees wanted you to sign the contract?

A. That's right.

Q. What did you say at that meeting, Mr. Ekers?

* * * * * * *

A. I can't recall the exact words, any more than the gist of the conversation was what I have just got through telling you—that the Union was threatening us with pos-

sible trouble if we did not sign a contract, and I wanted the employees' reactions to that situation.

• • • • • • •

[fol. 150] Q. Mr. Ekers, before we recessed for lunch I was questioning you concerning the meeting that you had called at Leon's Tavern February 1st, 1954, and you told us that there were fifteen employees——

A. I don't remember the exact number, twelve to fifteen.

Q. Did that number include Ray Thursby, your manager?

A. Yes, sir.

Q. Did he express any opinion on that evening concerning whether you should or should not sign a contract with the Union?

A. I don't remember. There was remarks made all around the table.

• • • • • • •

[fol. 151] Q. Was Thursby the only supervisor who was there?

A. No, I think Mr. Moyer was there.

Q. Mr. Moyer, your bookkeeper?

A. Yes, I think so.

Q. Summed up, Mr. Ekers, did you invite some of those people who were there to express an opinion about the Union?

A. Yes, sir.

Q. What did they tell you?

A. Everyone of them that expressed any opinion were against us signing the contract——

Q. That is, against the plaintiff corporation signing a contract?

A. Yes.

Q. Can you tell us who expressed that opinion?

• • • • • • •

[fol. 152] A. I would say during the course of the evening practically everybody in the room expressed themselves as being against it.

• • • • • • •

Q. Did you discuss with any of the people present any of the terms of the proposal that had been submitted to you by the Union?

A. No, only the angle that was brought by us: Do our employees want me to sign a Union contract to force the members into the Union—that is, the working conditions, hours, pay—wasn't brought in it—never was brought up.

• • • • • • •

[fol. 153] Q. Isn't it a fact, Mr. Ekers, that at that meeting on February 1st, 1954, you told those employees, that you had invited to the meeting, that you didn't want them to join the Union?

A. I did not make that statement, no, sir.

• • • • • • •

[fol. 154] Q. Starting October, 1953, right down to February 3rd, 1954, you had engaged in a series of meetings or conferences with Mr. Pollock or Mr. Dougherty, had you not?

A. That's right; yes.

Q. And during those discussions or meetings that were held with either both Mr. Pollock and Mr. Dougherty or [fol. 155] Mr. Pollock alone, you discused a number of issues, did you not, pertaining to the contract? You can answer that yes or no.

A. Yes.

Q. And one of the issues you had discussed—whether it was in the exact terms of the Union proposal—was the general subject of the Union shop?

A. Yes.

• • • • • • •

[fol. 156] Q. During all this time, at these meetings you held with Pollock or Dougherty, or both, is it not a fact, Mr. Ekers, that the real problem on your mind was how to convert or change over your existing operations to the suggestions made by the Union?

A. I wouldn't say that.

Q. Would you say that you were particularly concerned during these discussions with the cost effect—the dollars

and cents effect—of some of the Union suggestions upon your operations?

A. I gave that some thought.

Q. And, as a matter of fact, wasn't that the most important problem on your mind—how much it would cost you?

A. No, sir.

Q. Well, what was the most important problem?

A. I have said the most important problem.

Mr. Denlinger: State it again.

A. It would force my men into the Union against their will. And another thing, too, it would mean that I would no longer have the right to hire and discharge as I felt proper.

• • • • • • •

[fol. 157] I was told that, generally, was the contract I would have to sign, with very slight modifications.

Q. Did Pollock tell you that?

A. Pretty much those words, yes, that that was the standard contract and they couldn't divert from it very much.

• • • • • • •

[fol. 158] Q. At the meeting of February 3rd you, in substance, stated that you did not wish to negotiate any further with the Union. Am I correct?

A. I told them I wasn't ready to sit down and negotiate a contract with them now.

Q. And didn't Mr. Pollock ask you to continue and meet and try to reach an agreement on a contract?

A. He said this: they had voted to have a strike and that a strike might occur at any minute—or any day—I won't say any minute—he said it might be tomorrow and might be a month from now. And I said, "Well, I hear what you say about that situation."

Q. You heard what Pollock said?

A. Yes.

• • • • • • •

[fol. 159] Redirect examination.

By Mr. Denlinger:

Q. Mr. Ekers, do you recall that this morning Mr. Riemer inquired of you with reference to your conversation with Mr. Gibbs?

A. Yes, sir.

Q. And you testified that you had talked to Mr. Earl M. Gibbs, the Vice-President.

A. Yes, sir.

Q. And that Mr. Earl M. Gibbs told you that he couldn't sell you merchandise because it would strain his relationship with the Packers Union in his plant?

A. He didn't say Packers Union, but that's the Union that's in the plant. He said Union.

Q. He said the Union that's in his plant?

A. Yes.

Q. In connection with that conversation did he write you a letter?

A. Yes, sir.

Q. I will hand you what has been marked for the purpose of identification as Plaintiff's Exhibit 10, and ask you if that is the letter that Mr. Earl Gibbs personally gave to you on the date appearing at the top.

* * * * * * *

[fol. 160] Q. This letter reads: "B. H. Ekers has been a customer of ours for over 30 years, and is a valued account. We recently were advised by your union president that it would be against our best interest, as far as good relationship with our union is concerned, to continue to sell to Mr. Ekers. In order to preserve our good relationship with the union and its members, our workers, we have abided by their request." Was there ever any question of credit with this company that prevented you getting merchandise?

A. No, sir.

Q. And before this strike of the Butchers Union did you ever at any time have any difficulty in obtaining merchandise at Gibbs?

A. No, sir.

Q. And was there ever at any time any question between

you and Earl C. Gibbs, Incorporated, regarding the delivery of merchandise for any reason except the reason given by Mr. Gibbs in his letter of March 5th, 1954?

. . . . . .

A. Except this, no.

. . . . . .

[fol. 161] By Mr. Denlinger:

Q. This morning Mr. Riemer talked with you about calling on an employee by the name of Walter D. Carpenter. Do you remember that?

A. Yes, sir.

Q. He inquired of you talking to that gentleman.

A. Yes, sir.

Q. Now, you told the Court that Walter D. Carpenter was not a regular employee but one who was called to work at Tallmadge as you needed him. Is that correct?

A. Yes. He didn't average over three or four hours a week.

Q. Subsequent to the strike, which began on February 4th, did you call upon Walter D. Carpenter to ascertain whether or not he had become a member of the Butchers Union, at the time that you learned of that claimed situation in the hearing before Judge Wanamaker? Did you talk to him after that hearing or before that hearing?

A. I talked to him after that.

Q. After the hearing?

A. Yes.

Q. Had you concerned yourself prior to the hearing in Judge Wanamaker's courtroom, when Mr. Riemer's client was claiming Carpenter as an employee who was a member of the Union—had you discussed anything with Carpenter about Union affiliations?

A. I knew Carpenter was a Union man because he worked at a Union shop.

Q. Before you hired him?

A. Before I hired him, yes.

Q. All right. This paper, marked Plaintiff's Exhibit 11, will you tell the Court whether that is in your handwriting.

A. This here is.

Q. The top part of it?

A. Yes, sir.

[fol. 162] Q. And whose signature is it?

A. That is Walter Carpenter's.

Q. Did Walter Carpenter sign his name at the bottom of this page in your presence, and after he read this statement?

A. Yes, sir.

Q. And this statement, dated February 27th, 1954—is that the correct day on which he did——

A. Yes, sir.

Q. This statement says: "This is to state that I am hereby resigning from your employ of my own free will as of today." Is that the paper he signed at that time?

A. Yes, sir, that's right.

Q. Has he ever tried to work for you since?

A. No, sir.

Q. Has he ever been on the picket line to your knowledge?

A. No, sir.

Q. Let's go back to this time in Cleveland, which was after March the 6th, but during the time that Judge Wanamaker's order of injunction was in suspension in the Federal Court. And I want you to state to the Court again where it was that you talked to Milton Davis.

A. I can't recall whether the conversation was in the Peerless office or whether it was in the Peerless cooler.

Q. It was on the Peerless property, is that correct?

A. It was on the Peerless property, that is correct; yes, sir.

Q. And it was on that occasion that Milton Davis told you what?

A. He says: "The Union told us not to sell you."

Q. All right. Mr. Ekers, at that time were you at the Peerless Company to buy merchandise?

A. Definitely.

[fol. 163] Q. Did you talk to Mr. Milton Davis, the customary salesman from whom you made the purchases?

A. Yes, sir.

Q. Had you previous to this occasion made the purchases at Peerless through Mr. Davis?

A. Yes.

Q. And who was present in the cooler at the Peerless Company at the time that this occurred?

A. I couldn't recall who was in the cooler. They have a lot of workmen working in the cooler all the time.

* * * * * * *

Q. When did you see Samino and DeSantis there?

* * * * * * *

A. I saw them there in future visits to the place.

Q. In future visits?

A. Yes.

Q. Were you in the future able to make purchases at Peerless?

A. No, sir.

Q. But you did go back and try in spite of what Mr. Davis had told you?

A. That's right, yes.

Q. Prior to the strike on February 4, 1954, did Samino and DeSantis ever appear at any of the docks or places of supply in Cleveland where you purchased merchandise?

* * * * * * *

A. I never saw them before.

* * * * * * *

[fol. 164] Q. All right. Did you ever see Samino and DeSantis there at any of your places of supply before this strike occurred?

A. No, sir.

* * * * * * *

Q. Are there any sidewalks at the Tallmadge place of business?

A. No, sir.

Q. Are there any paths that have been worn by pedestrians using the space in front of your building for traffic, back and forth?

A. There's not enough foot traffic on the road to make a path.

Q. Did you, during the entire time you have been out there, ever see anyone actually using the front, walking towards Tallmadge or from Tallmadge, to your knowledge? Did you ever see anyone walking at any time?

A. I can't recall anybody.

Q. And the same goes for Richfield, doesn't it?

A. Yes, sir.

Q. There are no sidewalks at Richfield?

[fol. 165] A. Yes, sir—or no, sir, there aren't.

Q. There are no sidewalks?

A. That's right.

Q. There are no paths made there by pedestrians using it as a piece of land over which to traverse, going from one point to another.

A. That's right. Both places are relatively in the country—you might say, open spaces.

Q. And was there anything in connection with the curb, or a short distance from the curb, indicating a path or walk of any kind for the purpose of pedestrians?

A. No, there is no path or walk.

Q. At either place, West Richfield or Tallmadge?

A. No, sir.

Q. Now, you had a meeting with your people on February 1st, 1954 at what you called Leon's Tavern, in the evening. Is that right?

A. Yes, sir.

Q. How far is Leon's Tavern from your place of business?

A. About a half a mile.

Q. Was Leon's Tavern selected as a place of meeting for your employees because of convenience of the employees that you called there that night?

A. That's right. Some of them were working late—on the evening shift—and they could come from work.

Q. So the meeting was held after your store hours were closed at Tallmadge, is that right?

A. That's right.

. . . . . .

[fol. 166] Q. What was the purpose of the meeting?

A. To get my members—to sound out my members—or

employees—as to their thinking on the matter of signing a Union contract.

Q. I hand you what has been marked for identification as Plaintiff's Exhibit 12, and ask you to state if you recognize the signatures that appear on that paper, and if you do, tell the Court in what store they are employed.

A. This is one of the two papers that were signed by our employees stating their feelings in this matter.

Q. You recognize the signatures on that page?

A. Some of them I recognize. I have no particular reason to recognize others that I didn't have any date with them or contact with.

Q. All right. That paper was signed where, if you know?

A. At my place of business, at Tallmadge.

Q. At the Tallmadge store?

A. Yes, sir.

Q. And what store do the employees on that sheet work—what store do those employees work in?

A. Glancing over it I would say they are all Tallmadge employees.

Q. Those are all the Tallmadge employees. All right. I will hand you what has been marked for identification as Plaintiff's Exhibit 13 and ask you to state to *state to* the Court whether or not the signatures on that page are signatures of employees of your company, and state to the Court in which stores those employees work.

A. There are ten signatures there, all but the first one are employees of the West Market Street store; the other one is Mr. Moyer, who is the office manager of [fol. 167] the business.

Q. This morning you were interrogated by Mr. Riemer regarding a gentleman by the name of S. P. Speece.

* * * * * * *

Q. And Mr. Speece was resigning because of "complying with the request of Mr. Dugan in Saturday Beacon Journal I wish to give up my part-time job with you at present." Was this man working on another job?

A. Yes, sir.

Q. What other job was he working on?

A. I am pretty sure he was working at Goodyear Air Craft.

* * * * * * *

Q. Mr. Ekers, you testified in some detail regarding the nature of your business, the amount of wholesale and retail business. I now want to ask you to state to the Court whether or not any of your sales—whether they be wholesale or retail, are made outside the State of Ohio?

A. None, absolutely.

[fol. 168] Q. The entire sale and delivery of all merchandise in connection with your entire business is done wholly with customers within the State of Ohio?

A. Yes, sir.

Q. And how much do those annual sales amount to, in round numbers?

A. Between a million and a million and a half.

Q. For a fiscal year?

A. Yes, sir.

* * * * * * *

Q. You don't do any slaughtering at all out there?

A. No, sir.

Q. You, therefore, have no inspection, by way of Federal inspection of meat or local inspection, because you are wholly in the retailing and wholesaling of the finished product, is that right?

A. We have food inspection.

Q. You have inspection that comes from the Food De-

[fol. 169] partment?

A. That's right; no slaughtering.

Q. You have no license or privilege for slaughtering nor have you sought any?

A. No, sir.

Q. Do you make any reports to the Federal Government, except Federal Tax Reports, as any other person?

A. No, sir.

Q. You do pay into the Workmen's Compensation and pay a franchise fee to the State of Ohio?

A. Yes, sir.

Q. Now, is not this the fact, I want you to tell the

Court since February 4, 1954, from an examination of your business, have your sales dropped off?

A. Yes.

Q. About what percentage?

A. You want the comparison——

Q. —to last year.

A. At this time?

Q. Yes.

A. I would say they're off approximately one-third.

Q. From 20 to 30 per cent you say, would you?

A. Approximately 30 per cent.

• • • • • • •

Recross examination.

By Mr. Riemer:

Q. Mr. Ekers, tell us, in this handwriting in blue ink on Plaintiff's Exhibit 11 the handwriting of Carpenter?

A. That is my handwriting.

Q. Oh, that is your handwriting?

A. Yes, sir.

Q. You wrote that down there?

A. Yes, sir.

Q. And you read it to Carpenter?

A. Well, I showed it to Carpenter after discussion of the matter.

Q. And he signed it after discussion on the matter?

A. Yes.

Q. What was the discussion you had with Carpenter [fol. 170] about it?

A. I told him I was surprised to hear he had gone on strike because he never stated that he ever had any—always seemed on the best of terms and never stated he had any grievance at all. And he replied and told me he never knowingly signed an affidavit stating he was on strike.

Q. Plaintiff's Exhibit 11 is dated February 27th.

A. Yes, sir.

Q. Is that the time you visited Carpenter?

A. Yes, sir.

Q. Was it at his home?

A. No, sir.
Q. Where?
A. In the Falls.
Q. Where?
A. I met him coming out at work, at the corner of Bailey Road and Front Street.
Q. Where was this signed?
A. There.
Q. On the sidewalk?
A. In his car.
Q. In his car in Cuyahoga Falls?
A. That's right.
Q. Did you just chance to meet Carpenter?
A. I figured he would be coming out of work that time. He lives in Ravenna and has no telephone number and I couldn't communicate with him unless I went all the way.
Q. You had a pretty good idea he would be at his place of work?
A. Yes, sir.
Q. And he would be coming about that time?
A. That's right.
Q. And both of you sat in his car?
A. In his car.
Q. And you wrote this out?
A. And I told him——
Q. You knew at the time, February 27th, 1954, did you not, Mr. Ekers, that Carpenter had executed an affidavit, [fol. 171] which is a matter of record in this court, that he had authorized the Union to represent him and that he joined the strike on February 4th, 1954?
A. I knew there was an affidavit to that effect, yes, sir.

* * * * * * *

[fol. 172] Q. Mr. Ekers, to go back to this matter. At the time that you asked Carpenter to sign that resignation you knew of this affidavit, did you not?
A. Yes, sir.
[fol. 173] Q. And is it your testimony that Carpenter denied that he signed this?
A. He told me he signed a paper but didn't know that it stated he was on strike.

Q. Now, Carpenter was a part-time employee, was he not?

A. Yes, sir.

Q. Is it your custom or practice in the management and operation of your business to request employees to resign other employment?

A. We have not—the man told me, when I went to see him, that he didn't want to cause me any embarrassment in this matter—he didn't know he signed the affidavit and would be only too glad to give me a resignation.

Q. Have you on a previous occasion, when you had no need for an employee, requested them to resign?

A. No, sir.

Q. You either discharge them or lay them off, do you not?

A. I don't know. I can't ever recall discharging an employee.

Q. And if you have no need for an employee you lay them off?

A. If I have no need, but I——

Q. You don't request them to resign, do you, Mr. Ekers?

A. I have never had any need to discharge or lay off any employee because my business, up to the strike, was increasing all the time.

Q. Is this the first time you ever asked an employee to resign?

A. I didn't ask him to resign.

Q. Is it your testimony that this man Carpenter voluntarily offered to resign?

A. Yes, sir.

* * * * * * *

[fol. 174] Q. Can you fix a little more definitely the time of the conversation with Milton Davis, of Peerless Packing?

A. It was very shortly after the strike was started that I went to the Peerless Packing. I think my purchase records will show the time. I went to the Peerless Packing Company to buy meat, and they told me they couldn't sell me——

Q. All right. You have already testified as to what Milton Davis told you. Now I want you to tell us—and

do you have any records that will verify or corroborate your recollection—I want to know when you talked to Milton Davis.

A. Within three or four days after they started the strike.

• • • • • • •

[fol. 175] Q. When was the conversation, though, with Milton Davis when he said to you that Peerless wouldn't sell you any more goods?

A. Within four days after the strike started.

• • • • • • •

Q. Did you close your Tallmadge operation early in order to hold the meeting?

A. No, sir.

[fol. 176] Q. It was held after work?

A. After work, yes.

Q. Now, we have here Plaintiff's Exhibit 12, dated February 10th, 1954. I think you have testified this was signed—or those are the signatures, so far as you can identify them—of your employees at Tallmadge? Correct?

A. Yes, sir.

Q. I see here the signature of David Rodocker.

A. Yes, sir.

Q. He is on strike, is he not?

A. Now, yes.

Q. I see here the signature of Ray Thursby.

A. Yes.

Q. He is your manager?

A. That's right.

• • • • • • •

[fol. 177] Q. Who circulated this petition—physically?

A. I can't answer the question. My manager, Mr. Thursby could.

Q. Do you know who drafted, dictated or composed the language—the typed language—appearing at the top of the petition?

A. No, I don't. Maybe he could tell you that, too.

Q. You don't know who passed it amongst the employees?

A. I think he had it prepared and notified the employees of it, and——

Q. You think Mr. Thursby, your supervisor——

A. I am pretty sure.

Q. —had it prepared and circulated?

A. Yes, sir.

Q. And Mr. Thursby is the manager of your Tallmadge plant?

A. Yes, sir.

Q. And he is a supervisor?

A. Yes, sir.

Q. Does he hire employees?

A. Yes, sir.

Q. Does he fire employees?

A. He never has that I know of.

Q. Does he have the right to discipline employees?

Mr. Denlinger: Oh, object, your Honor please. We are not trying a Labor Board case.

Mr. Riemer: Sometimes I am afraid we are, Mr. Denlinger, because you have brought the issues up, and not [fol. 178] we.

Q. Now, did you, Mr. Ekers, circulate any such petition at West Richfield?

A. No, because at the time this petition was circulated there was only two—we circulated it with the employees that were still—we gave them a chance to sign it if they so wished, the employees that were still there. There was only two or three that remained at work. And they, I think you will find, are on that other petition.

Q. Your West Richfield employees signed Plaintiff's Exhibit 13, is that it? Can you name them?

A. (Examining Exhibit 13.) This is one of them.

Q. Robert W. Hurst.

A. And Cecil Miller.

Q. Robert W. Hurst is a West Richfield employee?

A. Yes.

Q. And he is the manager of West Richfield?

A. No, I woudn't say that.

Q. What do you call him?

A. I would say he is just a meat cutter. Mr. Moyer is the manager.

Q. And Mr. Moyer signed?

A. Yes, sir.

Q. You have the manager and one of your supervisors signing it.

A. I didn't say he was a supervisor.

Q. Mr. Moyer isn't a supervisor?

A. Mr. Moyer is, I mean Mr. Hurst isn't.

Q. Is Mr. Hurst in the courtroom?

A. No, sir.

Q. Now, can you tell us who circulated this petition? That is, physically circulated it.

A. There might have been more than one person circulated it.

[fol. 179] Q. Do you know?

A. It was taken over to my West Market Street store, and the manager there talked to the employees to find out whether they cared to sign such a paper.

Q. That is Mr. Moyer?

A. No. West Market Street is William H. Brigham.

Q. He appears as signature 5 in the first column.

A. That's right.

Q. And he signed it?

A. Yes, sir.

* * * * * * *

Q. You told Mr. Denlinger, in response to an inquiry that your sales had dropped off approximately one-third.

A. Yes, sir, from last year.

Q. What period of time is covered by that, please?

A. Well, I would say February and March as compared to February and March of the previous year.

* * * * * * *

[fol. 180] THOMAS J. COOK, called by the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Riemer:

* * * * * * *

Q. What is your profession?

A. Certified public accountant.

Q. Are you licensed and authorized in practice as such in the State of Ohio?

A. I am a certified public accountant of Ohio.

Q. Is one of your clients the Earl C. Gibbs, Incorporated?

A. It is.

Q. What services do you perform for Earl C. Gibbs Incorporated?

A. We make an annual audit of their books, render financial statements, annual audit, and prepare their income tax return, franchise tax returns, personal property tax returns.

* * * * * * *

[fol. 181] Mr. Riemer: * * * let me advance what I pro-
[fol. 182] pose to show from this witness. I propose to show, based on the document Mr. Cook has prepared for us, taken from Gibbs' records, a brief statement showing the source of cattle purchases by Gibbs for the year 1953 —their source—the percentage of cattle received by Gibbs from outside the State of Ohio. And then in turn, following that, if I am permitted to continue, the total sales for the year 1953 to Fairlawn Meats, Inc. My theory is simply this, that those figures will indicate a percentage breakdown showing, percentage-wise, the purchase by Gibbs from outside the State of Ohio, and then, in turn, the total sales of all the cattle purchased from Gibbs by Fairlawn Meats. And since no distinction is made by Mr. Ekers whether he purchased meats or dressed beef from Gibbs, I think it follows reasonably from that, that substantially the same percentage is revealed in purchases by Fairlawn as revealed by Gibbs of his purchases. In other words,

relatively speaking, the same percentage of sales by Gibbs from outside the State of Ohio. Let's say, for example, it is 60 per cent, that same 60 per cent would be reflected in sales to Fairlawn. I recognize that the cattle came to rest in Cleveland, slaughtered in Cleveland and dressed in Cleveland.

The Court: Then doesn't interstate commerce stop there?

Mr. Riemer: No.

Mr. Denlinger: It does according to the Schecter case, and it has not been overruled.

• • • • • • • •

[fol. 183] Q. Mr. Cook, did you prepare or cause to be prepared from the books of Earl C. Gibbs, an account of the purchases of Gibbs for the last quarter of the year 1953? You can answer yes or no.

A. Yes, sir.

Q. And does the account you prepared, based upon figures of Gibbs and books of Gibbs reveal the source of the cattle purchased by Gibbs within the State of Ohio?

• • • • • • • •

[fol. 184] Q. (By Mr. Riemer) Go back a question. Can you tell us from the documents prepared by you, or under your supervision, based on the books of Gibbs, the percentage source for last quarter of 1953, of cattle purchased by Gibbs.

A. According to the—May I qualify it just a bit?

Mr. Denlinger: No. Just answer the question.

A. Purchases within the state, 5484 head of cattle.

Q. And outside?

A. Outside the state, 8758 head of cattle. The percentages are as follows: within the state 38.50; without the state, 61.50.

• • • • • • • •

[fol. 185] Q. Now, Mr. Cook, did you prepare, or have caused to be prepared at my request, an analysis of the account of Fairlawn Meats, Inc., with Earl C. Gibbs for the year 1953?

A. I did.

Q. And can you give us the total charges for that year, please.

A. January 1st——

Q. No, I don't think you have to break it down by months.

A. $146,073.90.

The Court: That is for the entire year 1953?

The Witness: $146,073.90.

Q. I hand you what has been marked as Defendant's Exhibit 15-A. Does this sheet—15-A—reveal the figure you have testified to concerning the percentage source of supplies?

A. This statement here is revealed in the exhibit.

Q. And Defendant's Exhibit 15-B is the statement of total charges from Gibbs to Fairlawn Meats for the year 1953?

A. According to the ledger account, yes, sir.

• • • • • • •

Cross-examination.

By Mr. Denlinger:

Q. Who is employing you in this matter?

A. I took my instructions from Earl M. Gibbs, that is who I am looking to—that is my client.

• • • • • • •

Q. Who did you talk to about this case?

A. Earl M. Gibbs and Sam Pollock.

• • • • • • •

[fol. 186] Q. What was your conversation with Mr. Pollock?

A. Earl M. Gibbs called me up.

Q. When was this.

A. Along the early part of March, and asked me to be at the Gibbs office the next morning.

Q. In the early part of March, is that correct?

A. Early part of March, yes, and at that time he intro-

duced me to Mr. Pollock and said there was a dispute and they wanted certain information of the Fairlawn Markets, Incorporated—from Fairlawn Meats, Incorporated—in regard to a certain dispute.

• • • • • • •

[fol. 187] A. And he would like to know whether I could state whether these sales were from cattle purchased within the state or without the state. I said I couldn't.

Q. And you said you couldn't?

A. That's right.

Q. What did you mean by that?

A. They don't keep a lot statement. When a carcass comes down they don't keep a lot statement, they don't follow it through. The animal is there, the carcass card is there, but when the sale is made it is only the loins of beef, or whatever it happens to be, is on the invoice.

Q. In other words, you don't know what the meat that Mr. Ekers got—whether it came from a cow in Argentine or a cow in Ohio, do you?

• • • • • • •

A. I have no knowledge of what he actually got—I mean, [fol. 188] what cattle it came from—that's right.

• • • • • • •

Q. And you can't say and don't attempt to tell this Court that the merchandise that Mr. Ekers got came from animals outside of Ohio, do you?

A. I can only give the record of what he purchased. What animals it came from I can't say.

• • • • • • •

[fol. 189] RAY THURSBY, called by the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Denlinger:

• • • • • • •

Q. What is your business?

A. I am manager of the Tallmadge store.

Q. Of what company?
A. Fairlawn Meats.

* * * * * * *

[fol. 190] Q. I will ask you whether or not Plaintiff's Exhibit 12 was presented by you to the employees of the Tallmadge store.

A. Yes, to the extent of, I would say, 95 per cent of them.

Q. Did you understand my question: I asked you whether or not you were the one in that store—having heard Mr. Eker's testimony—that presented this paper to the employees at that store.

A. Yes, sir.

Q. With reference to seeing the signatures on there—actually put on that paper—how many do you say you personally saw put on there?

A. 95 per cent.

Q. Do you recognize the signatures of all the employees on there as being the employees of the Fairlawn Meats, Incorporated, at the Tallmadge store? Are all of those signatures the signatures of employees at the Tallmadge store?

A. Yes, sir.

Q. I hand you what has been marked for identification as Plaintiff's Exhibit 16, and ask you to tell the Court whether or not you recognize the signature of Robert Vargo on that paper.

A. Yes, sir.

Q. Will you state to the Court whether or not you were present when Vargo and the two men who signed as witnesses were present?

A. Yes, sir.

Q. Where was that paper signed?

A. In our office at the Tallmadge store.

Q. And on the date that it purports to bear, March 6th, is that correct?

A. Yes, sir.

Q. I will hand you what has been marked for identifica-
[fol. 191] tion as Plaintiff's Exhibit 17, and ask you to state to the Court whether or not you recognize the signa-

ture at the top of that page as the signature of Don Herbruck?

A. Yes, sir, it is.

Q. Was that signed in your presence?

A. It was.

Q. And in the presence of the two men who appear as witnesses on that paper?

A. Yes, sir.

Q. And where was it signed?

A. In our office at the Tallmadge store.

Q. And on the date that it purports to bear, March 6th, is that right?

A. Yes, sir.

* * * * * * *

Cross examination.

By Mr. Riemer:

Q. I show you Plaintiff's Exhibit 12, Mr. Thursby, and this is the document which you said you presented to the employees.

A. Yes, sir.

Q. Who drafted or dictated the language in type?

* * * * * * *

A. I did, sir.

* * * * * * *

Q. Was it typed in the Tallmadge store?

A. Yes, sir, it was.

Q. And this is your—you signed it, did you not?

A. Number eleven.

Q. Now, what was the manner or method of circulating [fol. 192] this document, Mr. Thursby?

A. I presented that document to each employee, asked them to read it, and then stated if they wanted to sign it they could do so, if not they didn't have to.

Q. Did you walk up and down the market or call them to your office? How did you do that?

A. No, I circulated through the market.

Q. From one employee to another?

A. To wherever they happened to be working.

Q. For instance, Zuchniak, was he the first man you spoke to?

A. Yes, sir.

Q. Zuchniak, he was the first one you spoke to that signed it?

A. Yes, sir.

Q. Is Tallmadge the only place where you circulated this or a similar document?

A. It is the only place I circulated any document.

Q. Mr. Ekers ask you to do this?

A. No, sir. I done that on my own initiative.

Q. Did Mr. Ekers suggest you do it?

A. To my knowledge, Mr. Ekers didn't even know of it until it was almost finished. That wasn't signed all in the same time.

Q. Over what period of time was it signed?

A. In one afternoon and the following morning.

Q. Did you start it on the 10th?

A. Yes, sir.

Q. And you completed it on the 11th of February?

A. Yes, sir.

Q. Had you ever circulated a petition before this in the store amongst employees?

A. No, sir.

[fol. 193] Q. And this was circulated six days after the strike started?

A. That's correct.

. . . . . .

Q. Mr. Thursby, as the manager of the Tallmadge store for plaintiff's corporation, do you, in the performance of [fol. 194] your duties, hire or engage employees?

A. I do.

Q. Do you discharge employees?

A. I have the power; I never have.

Q. You have the authority but you have never exercised it?

A. That's right.

Q. Do you lay off employees?

A. Yes.

Q. Has there ever been an occasion to your knowledge since February, 1952, when you became manager, when you have obtained the resignation of employees?

• • • • • • •

A. Just in this instance where we just had these——

Q. That is the instances as revealed or reflected by Plaintiff's Exhibit 16, pertaining to Vargo?

A. That's right.

Q. And Plaintiff's Exhibit 17, pertaining to Don Herbruck?

A. That's right. That was the only time any one ever left.

• • • • • • •

[fol. 195] Q. Will you tell me, Mr. Thursby, how the occasion arose for Vargo to sign this document? Just relate the circumstances under which that occurred.

• • • • • • •

The Court: Tell the circumstances.

Q. I want to know the circumstances under which Vargo signed this document, Exhibit 16.

A. In order to explain the circumstances of this I have to bring in two or three others.

The Court: Explain the circumstances.

A. On March 6th, which I believe, to my best knowledge, was Saturday, Thomas Tandarich let it be known to Mr. Edward Gerry that he would resign if we so desired, because he had—I believe his statement was—he had joined the Union and didn't want to cause any more trouble than he thought necessary. So I called Tom to the office—I might say Tom was driving truck and I couldn't get in touch with him right that minute—I called Tom to the office, and when he came in I asked him if he wanted to resign.

Mr. Denlinger: This is Tandarich?

The Witness: That's right. And he said yes, if he thought it would keep us out of trouble or do us any good he would resign. At the same time I called Don Herbruck and Robert Vargo to the office——

Q. Excuse me for interrupting. Had Tandarich told you [fol. 196] he had joined the Union?

A. Yes, sir.

Q. And you say he offered to resign?

A. Yes, sir.

Q. Did he do so?

A. Yes, sir. I think you have the paper on that.

Q. Now, following that you say you called Vargo to the office?

A. Yes, sir, Vargo and Herbruck were there together.

Q. You mean they were there when you spoke to Tandarich?

A. No. Tandarich I spoke to by himself. Vargo and Herbruck——

Q. You called both of them to your office?

A. Yes, sir.

Q. Why did you call them to your office?

A. When I have anything to say I never talk to the employees—if I am going to dress down an employee I never do it in front of another employee.

Q. That is understandable. Did you call them to your office to dress them down?

A. No. It was simply the meeting place.

Q. Tell us why you called them to your office.

A. I told them what Tom was going to do and asked them if they so wished to resign—because I heard that they would also resign—wanted to resign.

Q. Now then, you had heard on March 6th that Vargo and Herbruck had joined the Union, isn't that correct?

A. Will you state that again, please?

(Last question read.)

A. That is correct.

Q. When did you first hear that, Mr. Thursby?

[fol. 197] A. You mean what time of the day?

Q. No, I don't care what hour of the day when you first heard it, but what day—when did you first learn that Vargo and Herbruck had either joined the Union or authorized the Union to represent them?

A. That was on March 6th, was the first day I heard it.

Q. Who told you that?

A. Tom Tandarich. Now, I heard this indirectly—Tom told Mr. Gerry and Mr. Gerry told me.

Q. After you had ascertained, or heard in this fashion, that these two boys had joined the Union, you then called them to your office?

A. That's right.

Q. What did you tell them when they got there?

A. I told them I heard they wanted to resign, or would resign, and also told them I heard they had joined the Union, and asked them if they had had any trouble with the company or with myself—any grievance whatsoever. And they both said, no.

Q. Do you have any objection to Union members working in your store?

A. No, sir. I hire Union members.

Q. If you had hired Union members, then why would you ask them to resign?

Mr. Denlinger: I object.

The Court: He may answer that.

A. I asked them to resign because I had heard they wanted to resign. And I also stated when I handed them those papers they could if they wished—they were not being forced to.

* * * * * * *

[fol. 198] Q. Did you type out this legend that appears on this exhibit—that is in the typewritten form?

A. The company secretary did.

* * * * * * *

[fol. 199] Q. And state whether or not you told them on that day, March 6th, that if they resigned from the Union they could come back to work for you?

A. I never made a statement like that.

Q. Now, Vargo—although he signed Plaintiff's Exhibit 16—was subsequently hired back, wasn't he?

A. That's right.

Q. How much later was he hired back, or how soon after was he rehired.

A. As near as I can recall, I believe March 6th was on Saturday.

Q. That's right, it was.

A. He was off all of the next week and Monday of the following week. That's pretty close; I may have missed a day.

Q. Did Vargo come to you and ask to be re-employed?

A. He did, sir.

Q. And you took him back?

A. That's right.

• • • • • • •

Q. Can you tell us what Vargo's hourly rate of pay was [fol. 200] on March 6th, 1954?

A. One dollar an hour.

Q. And when he returned to work for you what was his hourly rate of pay?

A. One dollar an hour.

Q. Has he received any increase since?

A. Yes, sir.

Q. What is it today?

A. I believe it is $1.10 today. I am not positive on that, I couldn't swear to it.

The Court: Did you tell him if he would come back to work for you you would increase his salary?

The Witness: No, sir, I did not.

• • • • • • •

Q. Did you give the raise to Vargo?

A. No, sir.

Q. Who did?

A. I believe Mr. Ekers did.

• • • • • • •

Q. Do you recognize Mr. Speece's signature?

A. I do.

Q. And is that in his handwriting?

A. It is.

Q. And everything on that exhibit is in the handwriting of Mr. Speece himself?

A. Yes, it is all except——

Q. Except the stenographer's notes. And that is dated approximately February 22nd, it appears to be?

A. Yes, I would say so.

• • • • • • •

[fol. 201] WILLIAM H. BRIGHAM, called by the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Denlinger:

• • • • • • •

Q. Where do you work?

A. Fairlawn Meats, Incorporated.

• • • • • • •

[fol. 202] Q. What store do you work?

A. West Market Street.

Q. That is the store that has leased space in the Sparkle Market, at the intersection of West Market and Sand Run Road?

A. Yes, sir.

Q. You have worked there continuously since that store opened?

A. I have.

Q. Were you working there in February, 1954?

A. I was.

Q. I will hand you what has been marked for the purpose of identification as Plaintiff's Exhibit 13, and ask you whether or not your name appears on that page.

A. My name is number 5 on this page.

Q. I will ask you to tell the Court what, if anything, you did to have this circulation of that paper among the employees of the West Market Street store of the plaintiff?

A. I called my employees together, I put the paper on the table we had in the working area there, and I told them

if they cared to sign it they were to do so, if they didn't care to sign it, not to do so.

Q. How many employees at West Market Street store?

A. Including myself there are five full-time employees.

Q. How many full-time and part-time?

A. There are four—well, nine all together.

Q. Four extras?

A. That's right.

Q. How many of the employees signed?

A. Eight.

Q. Who was the ninth one that didn't sign?

A. Pardon me, sir. I have only seven names here.

Q. And who didn't sign?

A. Marietta Channell.

Q. Channell?

A. That's right.

[fol. 203] Q. Is she still working there?

A. Yes, sir.

Q. Has she worked there continuously?

A. She missed one day, the day of the strike, February 4th.

Q. She was off on that day?

A. One day.

. . . . . .

Q. Tell the Court what you saw Frank Samino do with reference to Mrs. Channel.

A. They got in the car.

Q. Did they take her to their car?

A. Yes.

Q. What happened after that?

A. That I didn't follow.

Q. Did they drive away?

A. They drove away.

Q. And following that she didn't come to work on that day?

A. She didn't come to work on that day.

Q. Did she come the next day?

A. Yes, sir.

Q. And she has been working regularly ever since?

A. Excepting a few days she was off, sick.

. . . . . .

[fol. 204] Q. Referring particularly to No. 7, Max Krausman, tell the Court what you saw happen with reference to him the morning of February 4th, as it has to do with the defendant Union in this case.

A. On February 4th, on the morning of the strike, he drove his car into our parking lot in the usual manner. Instead of coming to the front door and coming in, he went around to the back door. Since there is quite a difference of space between the front and back we didn't hear him knock, so the last I saw of Mr. Krausman he was driving out of the parking lot.

Q. On that day?

A. Yes, sir.

Q. Did he later return to work?

A. Not to work. He came in the following morning, onto the parking lot.

. . . . . .

Q. Is he now working?

A. Yes, sir.

Q. And regularly, at the West Market Street store?

A. Yes, sir.

Q. And subsequent to not working he signed the paper you hold in your hand?

A. Yes, sir.

. . . . . .

Cross-examination.

By Mr. Riemer:

Q. Where did you get that document, Exhibit 13?

A. Mr. Ekers gave me the document out at the West [fol. 205] Market Street store.

Q. Did he give it to you on the date it bears, February 10th?

A. I can't honestly answer that question, but it was in that area, yes.

Q. And that was the form in which you received it?

A. That's right.

Q. And you say you called your employees together?

A. That's right.

Q. Who is Eugene B. Moyer, signature number 1?
A. He doesn't work at my store.
Q. Was his signature on it when you got it?
A. I believe it was, but I can't recall.
Q. Eugene B. Moyer was the bookkeeper?
A. Yes, sir.
Q. You think he had already signed it when you got hold of it?
A. Yes, sir. Our names start right here—number 4.
Q. Who is Hurst?
A. That I don't know.
Q. Who is Miller?
A. He doesn't work at Market Street.
Q. Is Paul Levine the first signature of a Market Street employee?
A. That's right.
Q. Number 4. On February 10th, or on or about February 10th, 1954, when Exhibit 13 was circulated by you, Marietta Channel was not working that day, was she?
A. I believe she was working with the store.
Q. She didn't sign it, did she?
A. No, sir.
Q. Did she refuse to sign it?
A. She said she would rather not sign it due to the fact that her husband is employed by the Rubber Company [fol. 206] and does belong to a Union.

* * * * * * *

[fol. 207] EUGENE B. MOYER, called by the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Denlinger:

Q. Your full name is 'Gene Moyer?
A. That's right.
Q. You testified this morning on cross-examination, Mr. Moyer?
A. I did, sir.

Q. I will hand you a paper marked Plaintiff's Exhibit 13, and I will ask you if that is your signature, number 1 on that page.

A. It is, sir.

Q. I will ask you whether or not you circulated that paper among the employees at the West Richfield store where you are manager.

A. That is right, sir.

Q. And what employees of West Richfield signed?

A. Robert W. Hurst, Cecil L. Miller.

Q. Those two gentlemen signed in your presence?

A. Yes, sir.

Q. And after reading at the top of the page?

A. That's right sir.

• • • • • • •

[fol. 208] OFFERS IN EVIDENCE

Mr. Denlinger: If your Honor please, I would like to offer in evidence all of the exhibits of plaintiff, from Exhibit 1 to——

The Court: You have some too, don't you, Mr. Riemer?

Mr. Riemer: Yes, sir.

Mr. Denlinger: Plaintiff's Exhibit 1 is the Stipulation. May it be admitted?

Mr. Riemer: No objection.

The Court: It may be admitted.

Mr. Denlinger: Exhibit 2-A and 2-B is the standard contract.

The Court: It may be admitted.

Mr. Denlinger: Exhibit 3 is a photograph.

The Court: It may be admitted.

Mr. Denlinger: Exhibit 4 is the photograph at West Richfield.

The Court: It may be admitted.

Mr. Denlinger: Exhibit 5 is the resignation of Thomas Tandarich.

Mr. Riemer: That I do object to, your Honor.

The Court: He hasn't testified, has he?

Mr. Denlinger: He testified personally, yes.

The Court: All right. That may go in.

[fol. 209] Mr. Denlinger: Exhibit 10, your Honor, is the letter from Earl C. Gibbs, Incorporated, to Mrs. Ekers, that you said would be accepted.

The Court: That may be accepted only for the specific purpose I have already indicated.

• • • • • • •

[fol. 210] MOTION TO DISMISS PETITION AND VACATE RESTRAINING ORDER AND DENIAL THEREOF

Mr. Riemer: May it please the Court, at this time I move to dismiss the petition and to vacate the temporary restraining order heretofore issued by Judge Wanamaker, on the ground that the plaintiff has failed to sustain the burden of proof and to state a case entitling it to the relief sought.

The Court: Overruled.

Mr. Riemer: Exception.

• • • • • • •

[fol. 211] SAM POLLOCK, called by the defendants, having been heretofore duly sworn, testified as follows:

Direct examination.

By Mr. Riemer:

• • • • • • •

Q. Mr. Pollock, you are the defendant in this action and President of Local No. 427 Union?

A. Yes.

• • • • • • •

[fol. 212] Q. In Akron it is the Local as a branch—is that what it is called?

A. Section.

• • • • • • •

Q. Does the Akron branch confine itself to all of Summit County or is it just the City of Akron or the metropolitan area?

A. Covers all of Summit and Portage counties.

. . . . . .

[fol. 213] Q. Now, coming down more specifically to the precise issues in this case, Mr. Pollock. Can you now tell us when it was that you first met with Mr. Ekers, the secretary of the plaintiff corporation?

A. The first time was in May of 1952.

Q. 1952?

A. Yes. It was just a brief meeting, that was the only time that I met with him in that period.

Q. I didn't know that. Now that you have mentioned it will you state very briefly what occurred then?

A. Merely that we discussed at that time the matter of an agreement, and I suggested that possibly Mr. Ekers could—in order to expedite matters and to give us time to negotiate with him—that he recognize the Union for collective bargaining purposes, and then we would proceed to negotiate an agreement with him at a subsequent period. And that was the nature of the——

Q. Was that before or after the Stipulation, which is Plaintiff's Exhibit 1, was executed?

A. That was before the Stipulation.

The Court: What time was that?

The Witness: In may.

Mr. Riemer: 1952.

The Court: Is that the first time you talked to him?

The Witness: Yes, that's the first time. Just briefly.

Q. And you say that was before Plaintiff's Exhibit 1 [fol. 214] was signed?

A. That's right.

. . . . . .

[fol. 214a] Q. Now can you tell us briefly what you said to Mr. Ekers and what he said to you on the occasion of the first meeting, October, 1953?

A. Well, we discussed the matter of negotiating an agree-

ment. We asked Mr. Ekers to consider the Union's agreements in effect in the Akron area, to look them over and to try to determine where he could meet the conditions, and if he had any problems relative to the recommended agreement that we would certainly be glad to discuss with him his problems and see if we could do something to work those out so that we could have an agreement with Mr. Ekers comparable to that we have in the industry.

Q. At that time, Mr. Pollock, did Mr. Ekers have with him the proposed agreement that had been handed to him by Mr. Dougherty, do you know?

A. I don't recall. I don't think so.

Q. You mentioned this first meeting in October, 1953. Can you tell us, without refreshing your recollection with any notes or minutes you may have kept, how many meetings were held after that first one in October, 1953?

A. I would say about six or seven meetings were held.

Q. Down to the——

A. The last meeting on February 3rd.

Q. February 3rd, 1954?

A. February 3rd, 1954.

Q. Six or seven additional meetings, including the one held February 3rd?

A. That is right.

Q. Where were those meetings held, the others?

A. As I recall, most of these meetings were held in Cleveland at Mr. Ekers' convenience. We held one meet-
[fol. 214b] ing in Akron.

Q. Where was that?

A. Our Union office in Akron, 31 North Summit Street.

Q. Was Mr. Ekers at the Union office?

A. Yes.

Q. Without going again into detail of each meeting—these six or seven you mentioned—can you state substantially the content of those meetings—what was said to Mr. Ekers by you and what Mr. Ekers said to you?

A. Most of our conversation in these meetings dealt with economic question. Mr. Ekers posed several problems that he had.

Q. What were those problems that concerned Mr. Ekers, as he stated them to you.

A. One problem was the fact that in the West Market

store he leased space there, and the hours of operation for him in that store were governed by the hours of operation of the owners of the food store, and that he could not see his way to closing up Sunday, although he wished he could, but he couldn't see his way clear to doing that, and wondered what could be done about that sort of a situation.

Q. Did you have any suggestion for meeting that?

A. I think we had made several suggestions in relation to it. One was on a basis of maintaining a minimum—you know—force there, having all meat cut and prepared during the week days, and just having the meat all ready in the cases, thus to minimize the amount of help he would need on Sunday to wait on trade and reduce whatever premium and costs there was. The other suggestion was we thought he might work it out on a basis so that regular full-time help would not — required to work on [fol. 214c] Sundays, and if they could work it out on a basis of part-time help, coming into the store on Sunday and wait on trade—that possibly for the purpose of that market might waive the double-time or part-time help.

Q. You mentioned that problem. Any other problems he raised and which were discussed?

A. Yes, he raised the pay problem, the wage problem.

Q. The hourly rate of pay?

A. The hourly rate of pay.

Q. Did you discuss that with him?

A. Yes.

Q. What was Mr. Ekers' problem on the hourly rate of pay?

A. As he presented it to me, he said some of the help he obtained—he had to obtain because he had no other choice in the matter—and that not all this help was competent or able to do the work he hired them for, and he couldn't see his way clear to giving them more money because they weren't able to produce even for the wages that he was paying them, and that he felt in some instances he had help there—two help to do the work of one.

Q. You mean two employees?

A. Two employees to do the work of one. So we told him we recognized that problem—that probably he had that problem, and we were certainly willing to work along

with him to try to—if he wanted to—to help him get competent help, and if we were unable to do that that possibly we could work something out on individuals who were unable to perform completely or fully the requirements of the job for which a pay rate is set, and waive the rate on them until such time as they met the qualifications or that replacements would come in fully qualified to do it, [fol. 215] in which case the labor for the individual would go up to the full terms of the agreement for that classification—whatever the rate was would then apply.

Q. Were there any other problems discussed?

A. One of the problems that Mr. Ekers discussed with us was his problem that his wage costs were running too high. He didn't state where they were running too high.

• • • • • • •

A. He told me his wage costs were running too high in relation to the volume of business he was doing. I said "That is possible, that could happen. But it has been our experience with our agreements that when these conditions are established—that once the rate of pay for the job is established that the people then were fully expected to qualify and do the work; that failing to meet the standards—both established by the Union of what competent workmanship is and as to the needs of the employer—that certainly we wouldn't stand in his way of making whatever changes would be necessary to put himself in a more profitable relationship." We also pointed out that the wages in our standard agreement with employers—overall wage costs—apparently were less than what Mr. Ekers' wage costs were. But that is a problem of management, not a problem for the Unions to solve, except to assist in getting competent help—or in emphasizing that the people, [fol. 216] once they get the rate—the job of keeping that job is up to the member—the Union can't hold the job for them, they can only negotiate the terms, then it is up to the member to qualify and hold that job.

Q. During those discussions—the six or seven meetings you had with Mr. Ekers, did you, in form or substance, negotiate the specific terms of any of the clauses of that agreement that had been submitted to him by Mr. Dougherty? Do you understand my question?

A. Could I have it repeated?

(Last question above read.)

A. I don't recall ever discussing any specific paragraph provision in our agreements. We discussed merely the problems raised by Mr. Ekers.

Q. Was the question of the Union shop or Union security raised by Mr. Ekers?

A. Yes, that problem was raised, but in all of our discussions it was pretty much incidental to the general discussion of wage costs, costs of operation and specific application of the premium pay for Sunday work, and so on.

Q. I would like to ask you again, did you discuss with Mr. Ekers, or did he raise, the question of the specific language of the Union shop clause in the contract that had been submitted to him?

A. No.

Q. Was there anything said at any of those meetings about the application of a Union shop, in principle or in fact?

A. There was discussion as to the application of the Union shop principle—in principle, I guess.

[fol. 217] Q. Is it then your testimony, Mr. Pollock, that the principal items which were the subject of discussion at these various meetings were the economic problems such as you have mentioned?

A. That was certainly my impression of all our discussions—that the major problem was economic.

* * * * * * *

Q. Will you tell us what transpired at this meeting in your office on the date of February 3rd in your presence, what did you say to Ekers and what did Ekers say to you?

[fol. 218] A. I asked Mr. Ekers whether he was going to sit down and work out the specific terms of the agreement with the Union. His answer was: "I don't care to negotiate a contract now. I am leaving the door open though, but I don't want to negotiate a contract now." I stated: "Well, you understand that this answer is unsatisfactory. We have to know where we are going with this thing." And Mr. Ekers said: "I fully appreciate

your position, but I don't want to negotiate a contract now—maybe later, but not now." I asked him to continue to meet with us, you know, to work out the terms of the contract. And substantially received the same answer: "I don't care to negotiate a contract now."

Q. Did Mr. Ekers, in the conversation, give you any reason why he didn't care to negotiate a contract now?

A. He said that he had held a meeting with his members —I mean with his employees—Monday evening, and that from his talk with them they didn't want him to sign a contract with the Union.

Q. Was there anything said at that time—that is, in your office on February 3rd—about the Union shop?

A. I can't recall. There was discussion about the attitude of some of his employees toward the Union—that they didn't want to join the Union. But I don't recall whether we discussed the Union shop as such. I know that I asked him to continue—and what I attempted to do all through that session—in our discussions with Mr. Ekers—was not to give us a "no" answer but to continue in negotiations with us with the hope we could resolve all the questions at some subsequent period. We were not [fol. 219] pressing him at any time to sign the contract immediately, we asked that he sit down and discuss the individual provisions of the contract, and it was that that he was answering to: "I don't care to negotiate now."

. . . . . .

Q. Before that meeting concluded was there anything said to Mr. Ekers about a strike?

A. Yes.

. . . . . .

[fol. 220] Q. Now, the next morning was February 4th, 1954. And what occurred on that day in so far as your relations with Mr. Ekers were concerned?

A. Strike was called. People were notified the night before, following our meeting with Mr. Ekers, that under the authority of the Union the officers were calling a strike to start February 4th. Mr. Jim Dougherty was instructed to advise the people to that effect. And on Feb-

ruary 4th picket lines were established at West Richfield, West Market and Tallmadge.

Q. Were the picket lines established simultaneously at all three operations, if you know?

A. Might be considered simultaneously. They were established first at Tallmadge and then about an hour or so later, as I recall.

• • • • • • •

[fol. 221] Q. Can you tell us, without reference to those records, how many employees the Union represented at the time the strike was called on February 4th, 1954?

• • • • • • •

[fol. 222] A. At the time of the strike?

Q. February 4th, 1954.

A. Eighteen.

Q. And those eighteen individuals were employed by the plaintiff-corporation?

A. Yes.

The Court: That is at the time the strike was called?

The Witness: Yes.

Q. Now, did all of those eighteen individuals go out there on strike, Mr. Pollock, in the sense that I now use the word—by a physical participation in the picket line?

A. No.

Q. At West Richfield can you tell us how many of the employees physically participated in the picket line?

A. Five.

Q. Has that figure changed—either decreased or increased—since February 4th, 1954, and down to date?

A. Increased.

Q. Now, at West Market Street on the morning of February 4th——

The Court: Pardon me. You said increased. To what extent?

The Witness: The extent that the two part-time—who were not scheduled to work on the day the strike was called—subsequently signed with the Union and then remained out on strike.

The Court: Plus the five?

[fol. 223] The Witness: Plus the five.

Q. Were those two part-timers employed at West Richfield, Mr. Pollock?

A. Yes.

Q. Now, at West Market Street, Mr. Pollock, did any of the employees at West Market street picket?

A. Actually picket—no.

Q. That was what I asked you,—no—if they did picket, and your answer is no. Did any of those employees represented by the Union at West Market Street participate in the strike? You can answer that by yes or no.

A. Yes.

Q. Will you tell us the extent or nature of their participation?

A. They remained away from work.

Q. Two employees, did you say?

A. Two employees.

Q. How long did they remain away from work?

A. As I recall they remained away until the 11th.

Q. Of February?

A. Of February.

Q. Do you know the names of those two employees?

A. Marietta Channel and Max Krausman.

Q. Now addressing your attention to Tallmadge. When the strike started on February 4th did any of the Tallmadge employees, represented by the Union, picket?

A. No.

Q. Subsequent to February 4th, 1954, did any of the employees represented by the Union participate in the strike at Tallmadge?

A. Yes.

Q. Can you tell us the nature of that participation? What did they do, in other words?

A. Well, two stayed away from work—wouldn't go in to work—that was Speece and Carpenter. Subsequent to them staying out several of the full-time employees came [fol. 224] out on strike. They were not all on the same da[illegible]—I don't recall the precise dates—but they were Rodocker, Mayo—that is Helen Mayo and David Rodocker —Digger O'Dell—Therom I believe.

Q. Digger is Therom?
A. Thérom, yes.
Q. And Digger is his nick-name?
A. Yes. And Tom Tandarich, Don Herbruck.

. . . . . .

[fol. 225] Q. In your presence and while you were there, will you tell the Court where you saw pickets walking?

. . . . . .

A. My observation was that the picketing involved two at each of the driveways, approximately five foot from the curb side. Occasionally, if the pickets dropped below two per driveway, the picketing then continued with one or two for the entire store on the devil strip within three to four feet of the curb line between the driveways.

Q. You use the phrase "devil strip", with which I am not familiar. Is that what I would call the tree lawn?

A. Generally speaking, I have reference to the dirt—uncovered—you know—uncovered strip of ground between the sidewalk and the curb line.

Mr. Riemer: Does the Court understand what is meant by a "devil strip"?

The Court: That is my expression of it.

Mr. Denlinger: Just a moment. There is no sidewalk out at Tallmadge.

The Court: It means where the sidewalk would normally be. He is just describing what he means by devil strip.

Q. Mr. Pollock, I will show you a photograph marked Defendants' Exhibit 19. Do you recognize it?

A. Yes.

Q. Did you take that photograph?

A. Yes.

[fol. 226] Q. Will you describe it, please, or identify that photograph.

A. This photograph was taken March 6th at Tallmadge —at the Tallmadge store.

Q. What is shown on that photograph?

A. What is shown on that photograph are two pickets

on the upper drive, or the north drive, and two pickets on the south driveway.

Q. That is, two pickets on this photograph are walking in the north drive entrance into the Tallmadge operation, are they?

A. That's right.

Mr. Riemer: Does the Court wish to see them. (Hand-Defendants' Exhibit 19 to the Court)

Q. I hand you Defendants' Exhibit 20, Mr. Pollock. Do you recognize that?

A. Yes.

Q. Was that photograph taken by you?

A. Yes.

Q. What drive is shown in that photograph?

A. The south drive at the Tallmadge store.

Q. That is the other drive from the one shown in Defendants' Exhibit 19. Right?

A. Yes.

Q. Can you identify those two pickets?

A. Helen Mayo and David Rodocker.

Q. Employees of the plaintiff-corporation?

A. Yes.

* * * * * * *

[fol. 227] The Court: Regardless of whether he consented or not, if they were trespassers they were still trespassers. Do you want to proffer the answer?

Mr. Riemer: I make offer of proof to this extent: if the witness were permitted to testify without objection in response to the question as to what arrangements he made with city officials prior to the picketing at Tallmadge, in response to such question he would say that he consulted Mayor Orr and the Chief of Police, and they, in response to questions from Mr. Pollock, said they would permit them to picket along the area identified by Mr. Pollock as the devil strip. I believe that name is correct—Mayor Orr?

The Witness: Yes.

Mr. Riemer: As part of the offer of proof may I ask the name of the Chief of Police. Do you know that name?

The Court: Yes.

A. Yes. Sam Andrews.

Q. Now, Mr. Pollock, addressing your attention to Market Street just very briefly. Mr. Pollock, very quickly, I hand you Defendants' Exhibit 21. Do you recognize that photograph?

A. Yes.

Q. Did you take it?

A. Yes.

Q. Does that show the Plaintiff-Corporation's operation on West Market Street?

A. Yes.

Q. Does that show the area outside the store?

[fol. 228] A. Yes.

Q. Showing you Defendants' Exhibit 22, is that another photograph of the same location?

A. Yes.

Q. Did you take it?

A. Yes.

Q. And that photograph shows a picket?

A. Yes.

Q. Can you identify the picket?

A. No.

Q. Well, whether you can identify him or not, he is carrying one of your cardboard aprons. Is that right?

A. Yes.

Q. Mr. Pollock, I show you Defendants' Exhibit 23. Will you identify that.

A. This is the location at the West Richfield store.

Q. Looking in what direction?

A. Looking from the second floor—that is, the second story of Mr. Ekers' store.

Q. Looking west, in other words. Substantially west?

A. Looking west, yes.

Q. Across the road?

A. Yes.

Q. That is the area in the dark gray foreground, that is the area in front of the store?

A. Yes.

Q. And the light area running diagonally is the state highway?

A. Route 21.

• • • • • • •

[fol. 229] Q. Do you know the individual in the apron there, standing at the car? If you know, Mr. Pollock.

A. I can't say definitely. (Examining exhibit 23.) I think I know who it is but——

Q. I don't think the Court will take that——.

A. It is one of the employees of the store.

Q. Did you ever observe yourself the picketing at West Market Street?

A. Very briefly.

Q. Well, to the extent you did, and in your presence, can you tell the Court where you observed the pickets walking at West Market Street?

A. I observed one picket only at West Market, in the east driveway of the west Market Street store.

Q. Is that, Mr. Pollock, in the area known to be occupied by the picket in Defendant's Exhibit 22?

A. Yes. This is the east driveway.

Q. Can you tell us, from your observation, the approximate distance separating this picket from the curb?

A. About six feet.

Q. Now, you did, from time to time, observe picketing at West Richfield, did you not?

A. Yes.

Q. And in your presence and under your observation can you tell the Court the position occupied or taken by the walking pickets at West Richfield?

A. When they were walking they were on the north of [fol. 230] the store approximately five—six feet from the curb, or where the curb would be.

Q. Now, with reference to Defendants' Exhibit 23, you have used the expression "where the curb would be." Is that the irregular line, let's say, that separates the light gray highway from the dark gray foreground?

A. Yes.

Q. Is that your opinion of where the curb would be?

A. Yes.

Q. Do you know the approximate distance between the highway and this either telegraph pole or light pole?

A. Approximately 7—8 feet.

* * * * * * *

[fol. 231] Q. Mr. Pollock, I show you what has been marked Defendants' Exhibit 24, that is a photograph. Did you take that picture?

A. Yes.

Q. Can you identify it, please?

A. It was a photograph of the store and plant of the Fairlawn Meats at West Richfield, Ohio.

Q. And that is looking east from the road?

A. That is looking east from the road.

. . . . . .

Cross-examination.

By Mr. Denlinger:

. . . . . .

[fol. 232] Q. You are a paid employee of the International Union?

A. I am a paid employee of Meat Cutters Local Union No. 427.

. . . . . .

Q. How long have you been business agent or president of Local Union of the Meat Cutters?

. . . . . .

[fol. 233] A. Since May 13th or May 12th, 1953.

Q. Prior to that what was your business?

A. Prior to that I was International representative——

Q. You were then on the payroll of the International Union?

A. At that time, yes.

. . . . . .

[fol. 234] Q. You have never been in the meat business?

. . . . . .

The Court: Were you the owner of a meat business?

The Witness: No.

. . . . . .

[fol. 235] Q. Now, part of this uniformity that you speak of in your direct testimony—you mean uniformity as to everybody belonging to the Union, don't you?

A. We mean uniformity as to wages, hours, and working conditions.

Q. And as a part of the working conditions, as a condition of his employment, he must be a member of the Union?

A. After thirty days they make application in our organization for membership.

Q. And it is compulsory that they belong?

A. If he has been there thirty days or more.

* * * * * * * *

[fol. 236] Q. As a policy of Local No. 427, and you as its president and business agent, consider the uniformity that you spoke of in your direct testimony to apply to the requiring of every one who works in a butcher shop in Summit County to belong to the Butchers Union, is that right?

A. At the present time all of our agreements that I can recall provide for the Union shop provision—Union security.

Q. There is no contract in effect with any of the employers you have mentioned that does not require all their employees to belong to your Union as a condition of working there?

A. I recall we have one agreement they are not required.

Q. What agreement is that?

A. That is with the Armour branch house contract right in Akron. That contract provides for maintenance of membership. If they voluntarily join they continue their membership in good standing. If they join—at any time they join they can continue their membership in good standing. But they are not required to be a member of the Union as a condition of employemnt.

Q. Is that the only contract in Akron to that effect?

[fol. 237] A. Contract with Parker.

Q. How many employees does Parker have?

A. Mr. Parker has two markets in the Akron area.

Q. How many employees in the meat busines?

Mr. Riemer: Let him finish, Mr. Denlinger.

Q. That was my question.

A. I would say about seventeen, of which seven are members and ten are not.

Q. Any others?

A. I can't recall any others.

Q. With reference to Armour, why have you made an exception there?

Mr. Riemer: Object.

The Court: He may answer that.

A. Well, that is the way the course of our negotiations have gone with the Armour branch house.

Q. That is because of your national contract with them?

A. No, it is a local agreement with the Armour branch. The branch houses come under local agreements, they do not come under the national agreement we have.

• • • • • • •

[fol. 238] Q. You first met Mr. Ekers in 1952, is that right?

A. Yes.

Q. And the very first time you talked to him—I think I got you correctly here—I want you to correct it if I [fol. 239] didn't—you told him that in order to expedite matters you desired him to recognize your Union as the sole bargaining agent, didn't you?

A. Yes.

Q. How many members did you have at that time?

A. I don't know.

Q. Can't you give us an idea?

A. No, I can't give you an idea because I wasn't familiar with the membership rolls at that time.

Q. When did you first become familiar with the membership rolls of Local No. 427, as to employees at Ekers?

A. After I became president of Local Union No. 427.

Q. When was that?

A. May, 1953.

• • • • • • •

Q. And what employees of Ekers, in number, did you have at that time?

A. I don't recall at that time.

Q. Can't you give us an idea?
A. No, I can't give you an idea.

• • • • • • •

Q. Was it as many as five?
A. I don't know.
Q. Have you any idea?
A. No.
Q. Was it a majority?
A. I don't know, not at that time.
Q. Have you ever had a majority?
A. I believe we have.
Q. When?
A. I believe we had a majority at the time of the strike.
[fol. 240] Q. How many employees did he have at the time of the strike in this Union?

Mr. Riemer: May I interpose this objection, and I will state my reasons for it and abide by the ruling of the Court. I am going to object to any questions designed to ferret out from this witness whether we did or did not have or represent a majority of the employees at the time the strike started on February 4th, 1954. I say it is for this reason: we are not going to conduct a Labor Board election, that this matter, and our right to peacefully picket, it not conditioned upon our ability to prove a majority, nor do I say the Court's authority to issue an injunction is based upon our inability to prove such a majority. Certainly we have a right to bargain for these people whom we do represent. And if the people we do represent are negotiating in a bona fide labor dispute through their representative with an employer, then we say we have a right to strike, provided again—I am assuming in all this—that our conduct is peaceful and lawful in manner. Whether we had possession of a numerical majority is not in issue.

The Court: I believe the Court is entitled to have a complete picture. You may answer. Objection overruled.

A. At the time of the strike I believe it was a majority.

Mr. Denlinger (To reporter.) Read the question, please.

(Question at top of this page read.)

A. How many employees?

Q. How many of Ekers' employees were eligible to membership in your Union at the time of the strike?

[fol. 241] A. I don't know.

Q. You have no idea?

A. Well, at the time of the strike we had an idea as to the number of people employed in Ekers.

Q. How many was that?

A. That——

Q. How much was that?

A. —we estimated around thirty-five.

Q. Don't you know it was more than fifty?

A. No, I didn't know it.

Q. How many employees have authorized you to represent them at the time of the strike?

A. As I recall there were eighteen authorizations.

Q. When were those authorizations signed?

A. Over a period of time.

Q. When was the last one signed before you went on strike?

A. I can't recall the exact date.

Q. You have the list of those people?

A. Yes.

Q. Will you produce it?

A. Yes.

(Witness produces the list requested.)

. . . . . .

[fol. 242] Q. Let me put it this way: how many members of your Local Union No. 427 are now participating in any manner in this strike, and will you name them at this time?

A. Well, one, two, three——

Q. Name them.

A. Smith, Rodocker, O'Dell, Horn, Guthrie, Conley, Minto, Leroy Smith, Delbert Brown, Helen Mayo, Thomas Tandarich, Don Herbruck, Walter Carpenter, Speece.

Q. In what respect are Tandarich, Herbruck, Carpenter [fol. 243] and Speece participating in this strike?

A. They came to us and told us they came out on strike in support of the Union's demands.

Q. I am talking about now. What are they doing now?

A. Tandarich, as I understand it, is picketing now—he's on strike.

Q. Do you know that he has resigned?

A. I saw a resignation you produced here.

Q. You heard him testify, didn't you?

A. Yes.

Q. And you say he is picketing?

A. Yes.

Q. Is he on the payroll of the Union?

A. No.

Q. Are you paying strike benefits to these strikers?

A. Yes.

Q. All of them?

A. Yes.

* * * * * * *

[fol. 244] Q. I believe you said you didn't know how many employees of Mr. Ekers you represented—that when you first saw him in May—and that you don't now recall, even when you became president of the Local Union, how many members you had?

A. I assume we represented members for the purpose of bargaining.

Q. How many?

A. I don't know. I'm sorry; I wish I could tell you.

* * * * * * *

[fol. 245] Q. On whose property have you been picketing at Tallmadge?

Mr. Riemer: Object.

Q. Do you know?

The Court: If he knows.

A. I don't know.

* * * * * * *

[fol. 246] Q. Do you know on whose property you are picketing at West Richfield?

A. I did not know we were picketing on anybody's property in West Richfield.

Q. You know that somebody owns the property in West Richfield.

A. It was our belief——

Q. Answer my question.

A. I believed that I was picketing, when I picketed, on a strip of ground that the public had access to. That was my belief and that was my understanding.

Q. Just a minute.

The Court: Strike that. Read the question.

(Question read as follows: You know somebody owns the property in West Richfield.)

Q. Don't you?

A. I said I believed that piece of property belonged to the State.

Q. You know that somebody owns it, don't you?

A. Yes, I assume somebody owns it.

Q. Who owns it, if you know?

A. I don't know. I assume——

Q. Don't assume anything. Answer my question. You don't know?

A. I don't know.

* * * * * * *

[fol. 247] Redirect examination.

By Mr. Riemer:

Q. Mr. Pollock, I show you this document which Mr. Denlinger used in questioning you. Will you state what this is? (Indicating Defendants' Exhibit 25.)

A. This is a list of the members, their addresses, the stores they worked in, the date they joined the Union, and the day they came out on strike.

Q. Did you prepare this or was it prepared under your direction?

A. Prepared under my direction.

Q. In the first column what do we have?

A. The names of those who signed up with the Union.

Q. And the second column.

A. Their home address and phone numbers, if available.

Q. And the fourth column is "Sex."

A. Yes.

Q. And place of employment is the fifth column?

A. Yes.

Q. I notice you have "Tallmadge, West Richfield and Market Street." That indicated the market where the individual was employed?

A. Yes.

. . . . . .

[fol. 248] Q. Mr. Pollock, just another question or two about this document, Defendants' Exhibit 25. The last column, under the legend: "Date went on Strike," appear certain dates. What are those dates?

A. Those are the dates that those that went on strike—the dates they went on strike.

Q. For example, opposite the name "Robert Hurst" there is a clause, "Stayed in." What would that mean?

A. That means in substance that he didn't come out on strike.

Q. Mr. Pollock, do you know part-time employees by the name of John Zepka and Ted Groza?

A. No, I don't know them.

Q. Prior to the hearing on the temporary application before Judge Wanamaker, Mr. Pollock, have you ever seen or been shown a payroll list of names of the plaintiff's employees?

A. A payroll and list of names——

Q. No. Listen to my question, please. Before the hearing on the temporary application, which came on before Judge Wanamaker, had you ever seen a company payroll showing the names of the employees?

A. No.

. . . . . .

[fol. 249] Recross examination.

By Mr. Denlinger:

. . . . . .

Q. One other thing, did you ever at any time, in your several conversations with Mr. Ekers, take up with him

any grievance of any employee regarding any subject of employment?

A. I don't recall of any.

Q. Did you hear Mr. Dougherty at any time present any question to Mr. Ekers of that nature?

A. I don't recall, no.

* * * * * * *

[fol. 250] DAVID RODOCKER, called by the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Riemer:

* * * * * * *

Q. Mr. Rodocker, are you a member of the Union?

A. Yes, I am.

Q. When were you first employed by the plaintiff—withdraw that——

[fol. 251] I don't think that I have established that you were. Are you an employee of the plaintff-corporation?

A. I am.

Q. When were you hired?

A. The first day in November, 1952.

Q. And have you been on strike?

A. Yes, sir.

Q. Since on or about when?

A. On or about the 19th or 20th of February.

Q. From 1952, the time you were hired, down to the time you went on strike, Mr. Rodocker, what was your job with the plaintiff?

A. Well, wholesale journeyman meat cutter.

Q. You say wholesale journeyman meat cutter?

A. Yes, sir.

Q. Will you give us a little more detail on your job and its duties?

A. I cut meat for the restaurants, hotels and lockers, accepted meat, signed bills and—well——

Q. How would you function? Did you get an order from your supervisor to cut certain meats?

A. It was on a bill—they wrote the orders on the bills, I picked up the bills and went from there.

Q. And you say these were for hotels?

A. Hotels, restaurants——

Q. What hotels?

A. Akron Hotel, Portage Hotel.

Q. Mayflower?

A. I don't recall the Mayflower, no, sir.

Q. For restaurants?

A. Yes, sir.

Q. Are those restaurants in the metropolitan Akron area?

A. Yes, sir. And also organizations.

Q. What do you mean by "organizations?"

[fol. 252] A. Like YW and YM and so on.

* * * * * * *

[fol. 253] Q. Now, there has been some testimony, Mr. Rodocker, of a meeting that was held at Leon't Tavern [fol. 254] on the night of February 1st, 1954. Did you attend that meeting?

A. Yes, sir.

Q. Will you relate how it happened that you went to that meeting?

A. Yes, sir.

Q. How did it happen?

A. That afternoon either Mr. Thursby or Mr. Gerry came up to me and told me they was having a meeting at Leon's Tavern and would like for me to be there.

Q. Had there ever been a previous occasion when Mr. Ekers had called a meeting in Leon's Tavern, or any other tavern, of employees?

A. I think there was one other meeting; I'm not sure.

* * * * * * *

Q. Did you go to any other meeting?

A. I went to about all the parties and meetings he has had.

* * * * * * *

Q. In any event, you went to this meeting on February 1st, 1954?

A. Yes, sir, I did.

Q. And approximately how many people were there?

A. I would say approximately twelve—fourteen people.

Q. Were they all Ekers' employees?

A. Yes, sir.

Q. Was Mr. Thursby there?

A. Yes.

Q. Leroy?

A. Yes, sir.

Q. Salesman there?

A. Which one?

Q. The company salesman.

A. Yes, sir.

Q. State whether or not Mr. Ekers provided any liquid [fol. 255] refreshment or drinks for the people that went to that meeting?

A. He did.

Q. Did you yourself have anything to drink?

A. Yes, sir.

Q. How many round- were provided?

A. As near as I can remember, there was two rounds.

Q. Did you pay for your drinks?

A. No, sir.

Q. Do you know if the other employees paid for theirs?

A. To my knowledge they did not.

Q. To your knowledge who did pay for them?

A. Mr. Ekers.

Q. Did you attend throughout the entire meeting?

A. Yes, sir.

Q. Did Mr. Ekers speak?

A. Yes, sir, he did.

Q. Did you hear him?

A. Yes.

Q. Will you tell us what Mr. Ekers said at that meeting, please.

A. Well, he told us the meeting—or gathering—was to talk over about the Union; that he didn't wish to see the Union come into the plant, and that he had called us together to ask our opinions.

Q. Did he say anything else that you can recall?

A. There was a lot said, I don't remember all of it.

Q. Do you now recall anything else as having been said?

A. Talked about wages and hours.

Q. What did Mr. Ekers say about wages?

A. He said we would be cut down to forty hours—whatever the Union contract called for pay rates that he would pay; there would be no over-time; he would close on Sundays.

[fol. 256] Q. Can you now recall anything else that he said?

A. There was so much said that I just don't remember.

Q. How long did the meeting last?

A. I would say approximately—not having a watch—approximately an hour and a half.

* * * * * * *

Q. Mr. Rodocker, I show you Plaintiff's Exhibit 12, and I ask you to refer to the first column of signatures. Does your name appear there?

A. Yes, sir.

Q. Is it opposite the figure "9"? That is your signa-

[fol. 257] ture?

A. Yes.

Q. Did you sign that?

A. Yes.

Q. On or about the date it bears, February 5th, 1954?

A. Yes, sir.

Q. Will you relate the circumstances under which you signed Plaintiff's Exhibit 12?

A. All of them?

Q. I don't understand your question. Let me put it to you again? I asked you would you relate to the Court the circumstances under which you signed this document, Plaintiff's Exhibit 12?

A. Yes, sir. I think prior to this here paper came around there was made a statement to me: "anybody having any——"

Mr. Denlinger: Just a moment. Who made it?

The Witness: Sure. Edward Gerry. That they knew who had anything to do with the Union, and when this was settled there would be new faces. Mr. Thursby brought

this paper around shortly afterwards and said: "You may read it and sign it if you want." And in order to protect my job—being afraid of it as I was—why, I signed it.

. . . . . .

[fol. 258] Cross-examination.

By Mr. Denlinger:

. . . . . .

Q. How many hours did you work in 1953?

A. I would have to figure that one up.

. . . . . .

Q. Well, figure these hours out first.

A. It is going to be inaccurate but I have the proof in my pocket.—Approximately 3315 hours.

Q. 3315 hours?

A. Yes, sir.

Q. How much did you draw—how much were your wages in 1953?

. . . . . .

[fol. 259] A. Somewhere in the neighborhood of $6,000.00—$5,500.00 or $6,000.00.

Q. As a matter of fact, you took in $6,315.00, didn't you?

. . . . . .

[fol. 260] Q. Where did you work before you came to Mr. Ekers?

A. Kroger & Company.

. . . . . .

Q. How much did you earn at Krogers the previous year?

A. I don't recall that.

. . . . . .

[fol. 261] Q. How much an hour were you working for at Krogers in 1952?

. . . . . .

A. I don't remember.

. . . . . .

[fol. 262] A. I would say somewhere in the neighborhood of $1.65 and $1.75 an hour down in 1952.

. . . . . .

Q. So your wages did go from $1.75 to $2.00 an hour in November of 1953, didn't they?

A. Yes, sir.

. . . . . .

[fol. 263] Q. How much paid vacation did you get?

A. I drew $100.00.

. . . . . .

Q. And you had only been employed at the company a year at that time, is that right?

A. Yes, sir, one year.

Q. So an employee with one year's service at this company drew $100.00 vacation pay at the end of the first year, is that right?

. . . . . .

A. Yes, sir.

. . . . . .

[fol. 264] Q. Did you talk to him at the time of the strike—that you went on strike—about anything?

A. I don't believe so—not about any grievance.

Q. So from the time of August, 1953, up to the time you went on strike on the 19th of February—20th of February, rather, you never talked to Mr. Ekers about any grievance?

A. I don't think so, no, sir.

Q. Now, you attended this meeting on February 1st, didn't you?

A. Yes, sir.

Q. What did you say at that meeting?

A. I agreed with the rest of them.

Q. What did you say, is my question.

A. I told Mr. Ekers that I would go along with him, that I didn't want the Union in the shop also.

Q. You said that in front of all the other employees, didn't you?

A. I had no choice, yes, sir.

Q. • • • What else did you say at this meeting on February 1st?

A. I said a number of things.

Q. What did you say?

• • • • • • •

Q. Was this out in the open, you said it to everybody, not particularly to Mr. Ekers?

A. There was about ten or twelve there, yes.

• • • • • • •

A. I told Mr. Ekers that I didn't want the Union in the shop, but whatever he did I would go along with him.

• • • • • • •

[fol. 265] Q. That is your signature?

A. It is.

• • • • • • •

Q. You weren't under the influence of any threats of anybody, were you?

A. Yes, sir.

Q. What threats?

A. Like I told you. The man faced me and told me he knew everybody that had any dealings with the Union and when this was settled there would be new faces. It was a threat against my job.

[fol. 266] Q. Who told you that?

A. Mr. Edward Gerry.

Q. He wasn't any one that could hire or fire?

A. That don't make any difference.

Q. Did Mr. Thursby present this to you?

A. He did.

Q. What did Mr. Thursby say when he presented this to you?

A. He said, "Read it and sign it if you want to."

Q. He didn't tell you that you had to sign it, did he?

A. I don't believe Mr. Thursby told me, no, sir.

Q. All Mr. Thursby said: "Read it and sign it if you want to."

A. I believe those are his words, might have been a little different.

Q. That is all he said to you?

A. Yes.

Q. And after that you signed it?

A. Yes.

Q. And after that you continued to work?

A. Yes.

. . . . . .

[fol. 267] HELEN MAYO, called by the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Riemer:

. . . . . .

[fol. 268] Q. Are you an employee of the plaintiff-corporation?

A. Yes, I am.

Q. When were you hired?

A. Around the latter part of October.

Q. What year?

A. Of 1953.

Q. And where were you hired?

A. At the Tallmadge store.

Q. You worked at Tallmadge?

A. Yes, I did.

Q. What was your job?

A. Cashier.

Q. Did you join the Union?

A. Yes, I did.

Q. Do you know the approximate date?

A. Around the 26th of February, 1954.

Q. Are you on strike now?

A. Yes, I am.
Q. When did you go out?
A. On the 8th of March.

* * * * * * *

Q. I show you Plaintiff's Exhibit 12, would you look towards the bottom of the first column, please. Do you see your name there?
A. Yes.
Q. Opposite the figure 16, is that your signature?
A. Yes.
Q. Did you sign it?
A. Yes.
Q. Will you relate the circumstances under which you signed this Plaintiff's Exhibit 12? It bears date of February 12th.
A. Mr. Thursby handed this to me and said: "Sign this." I said: "Do I have to?" He stuttered and says, "Well, if you want to."
Q. Did you sign it?
[fol. 269] A. I signed it. I felt I had to.

Mr. Denlinger: I object and ask that the last part be stricken.
The Court: Strike the last part: "I felt I had to."

* * * * * * *

[fol. 270] David Seidman, called by the defendants, being first duly sworn, testified as follows:

Mr. Riemer: Your Honor, this witness is called for the purpose of introducing testimony concerning interstate commerce.
The Court: All right. And I am accepting this with the same reservation. You take a general objection to this line of testimony.

Direct examination.

By Mr. Riemer:

* * * * * * *

Q. By whom are you employed?
A. Peerless Packing Company.

Q. And in what capacity?

A. Office manager.

Q. In the job of office manager will you relate very briefly what that entails. What do you do?

A. In charge of all the records, the office personnel and accounting.

Q. Do you, as office manager, have the custody of the books and records of the company?

A. Yes, I do.

Q. Do those books and records reflect the purchases by Peerless?

A. Right.

Q. And some books reflect the sales by Peerless to various customers?

A. Right.

Q. Do you number as one of your customers Fairlawn Meats, Inc., of Akron?

A. Right.

[fol. 271] Q. Mr. Seidman, did you at my request prepare, or cause to be prepared as office manager, in March of 1954, before the Federal Court proceeding, certain data with respect to the purchase of Peerless Packing and sales to Fairlawn Meats?

A. Right. For 1953.

Q. You did that for the year 1953?

A. Right.

Q. And you are here today under subpoena, are you now?

A. Right.

* * * * * * *

[fol. 272] T. W. O'Dell, called by the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Riemer:

* * * * * * *

[fol. 273] Q. * * * Are you employed by Fairlawn Meats?

A. Yes, sir.

Q. Where? That is, what branch.

A. Tallmadge.

. . . . . .

Q. You weren't invited? You did sign the petition on February 10th—Plaintiff's Exhibit 12—did you not?

A. That's right.

Q. And can you find your name on this? Is this it opposite the numeral 15?

A. Yes.

Q. Tell us the circumstances under which you signed that.

A. They brought the petition around, and every one was standing around, and they told me if I wanted to sign it, it was all right, and if I didn't it was all right. So I signed it the same as every one else.

. . . . . .

[fol. 274] Q. Mr. O'Dell, before February 4th, 1954, will you tell us what your hourly rate of pay was?

A. Started at $1.25.

Q. Don't tell us what it started out to be; what was your hourly rate before February 4th, 1954?

A. $1.50 an hour.

Q. After February 4th, 1954, did you get an increase?

A. Only on Sunday work.

Q. You got an increase for work on Sunday?

A. Twenty-five cents an hour.

Q. So that when you worked on Sunday you received $1.75, is that correct?

A. That's right.

. . . . . .

Cross-examination.

By Mr. Denlinger:

. . . . . .

[fol. 275] Q. Mr. O'Dell, as part of your duties there you weren't required to work on Sunday, were you, if you didn't want to work on Sunday extra time?

A. I didn't have to work on Sunday, no.

. . . . . .

THOMAS TANDARICH, called by the defendants, having been heretofore duly sworn, testified as follows:

Direct examination.

By Mr. Riemer:

. . . . . .

[fol. 276] Q. Now, Tom, you have identified your signature on this Plaintiff's Exhibit 5. Will you tell the Court the circumstances under which you signed this? Do you want to hold it? Will that help you?

A. I guess March 6th. Is that Saturday?

Q. Yes, sir, it was.

A. I just came back from deliveries that day and I went to check in my bills, and on the way out Mr. Thursby approached me and he asked me for my resignation, which I didn't have to sign if I didn't want to.

Q. You mean that paper you have in front of you?

A. Yes, this here. And after I signed my resignation I asked Mr. Thursby if I could have my position if I quit the *the* Union or got a withdrawal card, and he said I could.

Q. Thursby said you could have your job back if you quit the Union?

A. Yes, if I quit the Union.

Q. You haven't quit the Union yet, have you?

A. No.

Q. Have you asked for your job back since?

A. No.

Q. I show you Plaintiff's Exhibit 12, and in this first column, opposite the numeral 6, appears your name. Is that correct?

A. Yes.

Q. Can you tell us the circumstances under which you signed this Plaintiff's Exhibit 12?

A. I think when it was passed to me I just came back from delivery in the morning, and I think Audrey Kitchen asked me if I would sign that there, which I did.

Q. Audrey Kitchen is another employee?

A. Yes.

[fol. 277] Q. And you did sign it?

A. Yes.

Q. Subsequent to the date you signed this you did join the Union?

A. Afterwards, yes.

* * * * * * *

Cross-examination.

By Mr. Denlinger:

* * * * * * *

[fol. 278] Q. You joined the Union March the 2nd. Right?

A. Yes.

Q. You signed this paper on March the 6th?

A. Yes.

Q. You signed this paper after you joined the Union?

A. Uh huh.

Q. Did you tell Mr. Thursby you had joined the Union?

A. Yes; he found out from Eddy Gerry.

Q. You told Eddy Garrity, did you?

A. I didn't tell him; he found out some way.

Q. You mean Eddie Gerry, not Garrity?

A. You said Garrity; I didn't.

Q. Why did you sign this paper?

A. Oh, I don't know.

Q. Plaintiff's Exhibit 5. Tell the Court why you signed it.

A. I resigned my job.

Q. Nobody threatened you, did they?

A. No, they never.

* * * * * * *

[fol. 279] Q. Did you ever ask Mr. Thursby or Mr. Ekers for a raise?

A. Well, let's see—I started in at $1.00; after I started driving truck he give me a raise; and later on I think I [fol. 280] got another raise.

Q. You got two raises since you have been there, is that right?

A. Yes, I think so.

* * * * * * *

Q. You had just gotten out of school, is that right?
A. Yes, sir.

• • • • • • •

Q. So you were a High School student when you got this job at $1.00 an hour?
A. Yes, sir.
[fol. 281] Q. And in six months you received two raises, is that right?
A. Yes, I think so.
Q. And what was your final pay when you left?
A. $1.30 or $1.35; I'm not sure.
Q. Driving a truck?
A. Uh huh.

• • • • • • •

Recross examination.

By Mr. Denlinger:

Q. Have you worked any place else but Ekers?
A. Yes, sir.
Q. Where?
A. Saalfield Publishing Company.
Q. How much did you make there?
A. Eighty-five cents an hour.

• • • • • • •

[fol. 282] David Seidman, recalled by the defendants for further examination, testified as follows:

Direct examination.

By Mr. Riemer:

Q. Mr. Seidman, did you in this brief recess, while you were off the stand, complete the tabulation of those figures?
A. I did.
Q. Can you now tell us, based upon those records which you brought with you, the gross amount of sales by Peerless Packing Company to Fairlawn Meats, Inc., for the year, 1953?
A. It is $221,526.20.

Q. Will you repeat that figure?

A. $221,526.20.

Q. That is the dollar volume of purchases by the plaintiff from Peerless Packing?

A. Right.

Q. As revealed by your records. Now also, Mr. Seidman, did I not ask you to prepare the figures showing the source of dressed cattle sold by Peerless to Fairlawn for the year 1953?

A. Right.

Q. And did you do so?

A. I did one month, I did December, 1953.

Q. Now, can you tell us the system or method that Peerless used so that the source of the cattle can be identified?

A. We used lot number. When the livestock is purchased we assign a certain lot number to a group of cattle, and identify each carcass by a continuous sub-number in that lot.

Q. So that it is possible then for you to tell under that lot system or lot number system the source of your cattle? [fol. 283] A. That's right.

Q. Incidentally, those cattle are all received live by Peerless, are they not?

A. That's right.

Q. And slaughtered by Peerless?

A. That's right.

Q. And dressed for the consumer?

A. For the retail store.

Q. Based upon your records you say you prepared a sample?

A. For December, 1953.

Q. For the one month only?

A. Right.

Q. What does that sample reveal as to the source of cattle sold to the plaintiff?

A. You asked me to separate the livestock bought in Ohio and that bought outside of Ohio. 56.78 from out of the state, 42.22 per cent from Ohio.

Q. Was the first figure per cent?

A. 56.78 outside.

The Court: And the next was what?

The Witness: 42.22 purchased in Ohio.

Q. That is by Fairlawn?

Mr. Denlinger: No, that is by Peerless, isn't it?

Mr. Riemer: Let me ask him, Mr. Denlinger. I want to clarify that statement.

Q. Does that sample figure—is that a sample figure for Fairlawn's purchases——

A. Fairlawn's purchases from Peerless.

Q. In other words, is it correct for me to state that 56 per cent of the plaintiff's purchases in the month of December, 1953, were cattle originating outside of the State of Ohio?

A. That's right.

Q. Do you keep account or track of your lot numbers [fol. 284] on your beef, Mr. Seidman?

A. Yes, we do.

Q. By you I mean Peerless Packing Company.

A. Peerless Packing Company, yes.

Q. So that you know to whom those lot numbers are sold?

A. That's right, it appears on the sales invoice, the same lot number.

Q. Mr. Seidman, would you now put onto Defendants' Exhibit 26 the figure taken from this tape, showing the gross sales which you previously testified to?

(Witness does as requested.)

* * * * * * *

Cross examination.

By Mr. Denlinger:

Q. Do you have a Union in your plant?

A. We do.

Q. Do you know Mr. Pollock?

A. Yes, I have seen him before.

Q. Have you talked with him?

A. Sure did.

Q. Talk to him about this case?

A. Well, in general.

* * * * * * *

I saw him together with Mr. Riemer.

• • • • • • •

[fol. 285] Q. Did you ever prepare information like this in any other case?

A. Never before.

• • • • • • •

[fol. 286] Q. Mr. Ekers isn't buying of you any more, is he?

A. That's right.

• • • • • • •

Q. Will you answer it, please?

A. Well, I understand from what the boys tell that the Union asked the Company not to sell because there was labor trouble.

• • • • • • •

[fol. 287] OFFERS IN EVIDENCE

Mr. Riemer: The defendants now offer all exhibits which they have had marked, they being Defendants' Exhibits 6-A to -L.

Mr. Denlinger: What is Exhibit 6?

Mr. Riemer: They are documents prepared by Mr. Moyer based upon the company records.

Mr. Denlinger: We have no objection.

The Court: They may be admitted.

Mr. Riemer: Defendants' Exhibit 7-A and -B, record prepared by Mr. Moyer of plaintiff's interstate purchases.

Mr. Denlinger: No objection.

The Court: They may be admitted.

Mr. Denlinger: With the reservation that we claim that interstate——

[fol. 288] The Court: Yes, I understand.

Mr. Riemer: Defendants' Exhibit 8-A and -B, record of purchases intra-state for the month of January, 1954.

Mr. Denlinger: No objection.

The Court: They may be admitted with that same reservation.

Mr. Denlinger: Yes, your Honor.

Mr. Riemer: Defendants' Exhibit 9, Mr. Moyer's preparation of gross purchases interstate for the month of January.

The Court: It may be admitted with the same reservation.

Mr. Riemer: Defendants' Exhibit 15 is statement prepared by Accountant Cook.

The Court: You claim it was not competent and is not material?

Mr. Denlinger: That's right.

The Court: Your are not objecting to the form of manner of preparation?

Mr. Denlinger: No.

The Court: The Court will allow its introduction with the same reservation, that if I find it does not apply, I will disregard it.

* * * * * * *

Mr. Riemer: Defendants' Exhibits 19 to 24, inclusive, [fol. 289] your Honor, are pictures taken by the witness Pollock.

Mr. Denlinger: No objections.

The Court: They may be admitted.

Mr. Riemer: Defendants' Exhibit 25 is this document prepared by the witness Pollock.

The Court: Any Objection?

Mr. Denlinger: If that is admitted we would then ask that Exhibits 12 and 13 set forth the same information.

The Court: That is on the same basis, I sustained that.

Mr. Denlinger: I have no objection to that going in if these go in. These have been examined on further and the signatures identified by their witnesses. The Court isn't going to be prejudiced one way or the other.

The Court: I am going to reverse my ruling on those two exhibits 12 and 13 and allow them to be introduced as well as your exhibits.

Mr. Denlinger: And receive 25, is that it?

Mr. Riemer: Yes. And Defendants' Exhibit 26 is the last one, your Honor. That is this statement——

The Court: Did you check that with the tape and original entries? I see no objection to it. It goes to the ques-

tion of interstate commerce. It may be admitted with the same reservation.

Mr. Riemer: That completes it.

The Court: You have nothing in rebuttal and you are resting.

Mr. Riemer: Yes.

[fol. 290] RENEWAL OF MOTION TO DISMISS AND TO VACATE RESTRAINING ORDER AND DENIAL THEREOF

The Court: Now you will want to renew your motion for the record.

Mr. Riemer: Then having rested, your Honor, and the plaintiff having no rebuttal, I now renew the motion to dismiss on the grounds previously stated, and request, as well, that the temporary restraining order heretofore issued be vacated.

The Court: I will overrule that at this time.

* * * * * * *

Reporter's certificate to foregoing transcript omitted in printing.

[fol. 291] IN THE COURT OF COMMON PLEAS

No. 192338

FINDING—Emmons, J., September 2, 1954

In the first instance, it appearing to the court that there was a misnomer of the Union defendant wherein I was referred to as Local Union No. 427, Amalgamated Meat Cutters Union, Affiliated with the American Federation of Labor, and that the true style of the said Union is the Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 427, A. F. of L., the court is permitting the change of name to be made to conform to the proof by interlineation without reverification.

This cause came on to be heard upon the issues raised by the pleadings, and upon trial being duly had the court is of the opinion that there are but two questions involved:

First: Does the Common Pleas Court have jurisdiction in this case?

Second: Did the evidence prove a situation existing such as made picketing and other acts of the defendants [fol. 292] illegal to the extent that a permanent injunction should issue?

It goes without saying that if the first question is to be determined in the negative, then the second question need not be answered.

The defendants make much ado over the fact that the plaintiff company made purchases of meat, dressed and processed, which originally came into the state by interstate commerce, and since such was the fact then the National Labor Relations Board acquired exclusive jurisdiction in this case.

Albert Satin, Inc., v. Local 445 Electrical Workers, 22 L. W. 2606. In this case it was held that while it is apparent from a reading of the pertinent decisions and provisions of the Federal Act that Congress did give the Board exclusive jurisdiction over unfair labor practices affecting interstate commerce, it also gave the Board power to cede its jurisdiction to state courts.

Garner vs. Teamsters, 74 Sup. Ct. 161. Here the court determined that neither the NLRB nor the Labor Management Relations Act were involved except in cases in which the controversy "affects interstate commerce."

The cases following this particular line of reasoning continued to add to the phrase "affecting interstate commerce" and making it read: "substantially affecting and interfering with interstate commerce."

Later on the NLRB in the following cases expressed what was known as "the volume of business test." 91 [fol. 293] NLRB 638; 88 NLRB 226, 87 NLRB 248.

Finally the Board has set down greater measures and newer standards for "the volume of business test," which standards became effective July 15, 1954, and are set out in 14014 C. C. H.

"For retail stores:

1. A single independent retail store or chain of stores operating entirely within one state will not come

under the Board's jurisdiction unless the store involved in the case has:

(a) Purchases amounting to at least $1,000,000.00 a year coming to it directing from outside the state;

(b) Purchases of $2,000,000.00 a year coming to it indirectly from outside the state."

(The former standards for stores were $500,000.00 a year for direct purchases from outside the state and $1,000,000.00 a year from indirect purchases outside the state.)

Since less than 5 per cent of the plaintiff's business was wholesale, that business would well come within the definition of retail stores, and under either standard the business done by the plaintiff company was well under those measures of "volume of business."

Recently the NLRB in the case of Union vs. Arthur and Ted Shapiro, dba the Packard Company, dismissed that case in which the Packard Company was charged with unfair labor practices because it involved "small business" and did not come within the limits that the Board set for accepting jurisdiction, the purchases being well under the $1,000,000.00 class.

[fol. 294] It is therefore the court's finding that insofar as the first question is concerned that this court does have jurisdiction in this case, since the plaintiff company too is well within the limits set by the Board in their "volume of business test," and that if the Board originally had jurisdiction, it had ceded that to the state court.

Coming to the second question to be here determined, the court finds that a stipulation was signed by B. H. Ekers for the plaintiff, and Dan J. DeSantis, business representative, for the defendant Union, in which the employer (the plaintiff company) agreed that when a contract was concluded it should include a provision establishing a union shop security clause, and also further provided that either party might at their option cancel the stipulation.

Ekers, on behalf of the plaintiff company, would not sign a contract with the defendant Union, and even went so far as to bring this injunctive proceedings against them, so he thereby, constructively at least if not actually, exercised his option to cancel the aforesaid stipulation—so in-

sofar as this case is concerned, this stipulation is of no effect, except to express the intention of the defendants to cause the plaintiff company to establish a union shop.

The contract which the plaintiff company was asked to sign, and which the president refused to do, contained, among other terms, the following:

> [fol. 295]: "All employees covered by this agreement shall within thirty days after the execution of this agreement, or thirty days after their employment, whichever is later, during the term of this agreement, become members of the Union and remain members of the Union in good standing during the life of this agreement. The employer agrees to notify the Union of any new help."

Evidence was presented which proved the fact to be that no employees were exempted from the coverage and the terms of the contract, so that if and when the contract was signed it would be a compelling force for all the employees of the plaintiff to become members of the said Union, whether they wanted to or not or they could no longer be employed by the plaintiff company. And of the 50 employees of this company 41 of them on February 10th, 1954 signed the following statement:

> "We, the undersigned, employees of the Fairlawn Meats, Inc., hereby certify that there is no dispute or disagreement between us and our employer, the Fairlawn Meats, Inc., as to hours or work, rate of pay, or any conditions affecting our employment, and we are not on a strike against our employer, and we are not in favor of our employer signing any agreement that will force or compel us to join any union."

There have been numerous cases decided, locally and nationally, which heretofore gave the unions the right to peacefully picket and banner an employer under the constitutional right of freedom of speech, even though there was no labor dispute. Some of these cases are as follows: A. F. of L. vs. Swing, 312 U. S. 321; Milk Wagon Drivers etc., v. Meadowmoor Dairies, Inc., 312 U. S. 287; Iacomini's [fol. 296] Restaurant, Inc., vs. Hotel Employees and Bar

Tenders Local 118 et al., 63 Ohio Law Abstract 258. However there has been a recent definite trend that shows a change of thought, as pointed out in W. E. Anderson Sons Company vs. Local Union 311, 156 O. S. 541

> "Suddenly the view of the Supreme Court seemed to change to a recognition of rights in certain instances which warranted an injunction against picketing or bannering notwithstanding the constitutional protection of free speech."

After making the above statement Justice Hart, speaking for the Supreme Court of Ohio, then cited three cases decided by the Supreme Court of the United States: Building Service Employees International Union Local 262 vs. Gazzam, 339 U. S. 532; Hughes vs. Superior Court, 339 U. S. 460; International Brotherhood of Teamsters Union Local 309 vs. Hanke, 339 U. S. 470.

Quoting syllabus 4 in the Anderson case, supra, 156 O. S. 543:

> Picketing or bannering as a means of exercising free speech will be afforded constitutional protection as long as it is lawfully conducted, but the right of free speech is predicated on the lawful use of that right, and if through conspiracy or unlawful conduct the result of its exercise by such means unlawfully injures another in his property rights, the guarantee ceases and the exercise of the claimed right by such means may be enjoined or prohibited."

It was stated by Justice Minton In Union vs. Gazzam, 339 U. S. 533, cited supra:

> "If respondent had complied with petitioner's demands and had signed one of the tendered contracts [fol. 297] and lived up to its terms, he would have thereby coerced his employees. The employees would have had no free choice as to whether they wished to organize or what union would be their representative."

108 O. S. page 95, in The LaFrance Electrical Construction and Supply Company vs. the International Brother-

hood of Electrical Workers Local 8, et al., Justice Florence Allen said:

> "Equality of justice demands that in any controversy the rights of all parties are scrupulously maintained. The right of the workmen to be employed, irrespective of union membership, must be maintained; the right of the employer to conduct his business without illegal interference must be upheld and legal means employed by strikers must not be curtailed."

Crosby vs. Rath, 136 O. S. 352:

> "The right to contract, the right to do business and the right to labor freely and without restraint are all constitutional rights, equally sacred, and the privilege of free speech cannot be used to the exclusion of other constitutional rights, nor as an excuse for unlawful activities in interference with another's business."

Coming now to a decision rendered by our own Ninth District Court of Appeals in 94 Ohio Appeals 361, Bean vs. Local Union 698 et al., we find the syllabus in this case as follows:

> "In the absence of a dispute between employer and employees, or between the union and the employer or employees, a labor union may not engage in organizational picketing, even though peaceful, for the purpose of bringing pressure to bear upon the employer to re- [fol. 298] quire his employees to join the union."

In his opinion in the Bean case Judge Stevens stated:

> "The sole question for determination here is this: May a union, in the absence of a dispute between employer and employees, or between the union and the employer or employees, engage in peaceful picketing for the purpose of bringing pressure to bear upon the employer to require his employees to join the union? In other words, may peaceful picketing for organizational purposes of the union be lawfully conducted? We think the question stated has been completely an-

swered in the negative by the decision in Crosby vs. Rath."

Was there a labor dispute in the instant case? Miller vs. District 76, 23 Labor Cases 67487:

"Picketing for the purpose of coercing an employer to sign a collective bargaining agreement and compelling his employees to rejoin the union does not present the existence of a labor dispute and will be enjoined."

Wichusen vs. Griffin, 23 Labor Cases, Section 23683:

"Not every matter which directly or indirectly affects labor is a labor dispute. There is no labor dispute involved where a union pickets for the unlawful purpose of forcing an employer to sign a contract recognizing the union as exclusive bargaining representative of his employees, without their consent."

Hotel Restaurant vs. Union, 23 Labor Cases Section 67485:

[fol. 299] "Picketing for the purpose of forcing an employer to recognize as his employees' bargaining representative a union which does not represent a majority of his employees is the use of economic pressure for an illegal purpose and not in support of a bona fide labor dispute."

227 Ohio Jurisprudence page 45:

"Picketing is not beyond the control of the state if the manner in which picketing is conducted, or the purpose which it seeks to effectuate, gives grounds for its disallowance."

I am governed in this case by the previous holdings made by courts superior to this one, and I am duty bound to apply the evidence as I find it to—the law in this case, as interpreted by those courts.

Therefore, from all the evidence presented the court is of the definite conclusion that the defendants, Pollock and

Dougherty, acting for the defendant Union, attempted to get Ekers, President of Fairlawn Meats, Inc., to sign a contract compelling union membership in the defendant Union within 30 days or be discharged from the employment of the plaintiff company, which fact would have denied the employees their freedom of choice; that there was no labor dispute existing; that the banners, which recited: "On strike", did not state the truth, and that while picketing and bannering were peaceful yet since no labor dispute was involved the picketing and bannering became unlawful and caused a diminution of the plaintiff's business to some 30 per cent.

[fol. 300] I believe that it now has been established clearly by the decisions of the courts and the NLRB that injunctions will lie when the picketing and bannering is peaceful but unlawful, as well as where it is not peaceful.

A conspiracy is a combination of two or more persons to accomplish by concert of action some unlawful purpose, so that even though the pickets and defendants believed they were acting lawfully in peaceful picketing and bannering the plaintiff company, yet if it develops that their actions are unlawful then, having acted in concert, they become members of a conspiracy. Since the court is of the opinion that there is no labor dispute existing, then peaceful picketing and bannering done by the members of the defendant Union under the guidance and direction of the defendants was a conspiracy to do an unlawful act.

In this instance the court wishes to state that insofar as picketing and bannering were concerned it was evident that the members of the defendant Union acted as ladies and gentlemen in all respects. However, even though the court finds no fault in the manner of picketing, yet the purpose for which it was done makes it unlawful so as to entitle the plaintiff to injunctive relief.

Was there a secondary boycott?

A secondary boycott is a combination not merely to refrain from dealing with a person, or to advise or by peace-
[fol. 301] ful means persuade his customers from dealing with him, but to exercise coercive persuasion upon those parties from whom the person buys and to whom he sells which causes the buyers and the sellers to withdraw from

business with that person through fear of loss and damage to themselves.

There was evidence of probative value to sustain a charge of secondary boycott, and while those acts were not of such great prominence, yet they successfully lent themselves to proving the charges in the petition.

The court concludes that the allegations of the petition have been proved with sufficient weight as causes this court to find that the prayer of the petition should be sustained ordering a permanent injunction as asked for therein.

Journal entry to be prepared to conform to the court's finding, saving exceptions to these defendants.

[File endorsement omitted].

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* * * * * * *

[fol. 302] IN THE COURT OF COMMON PLEAS

Case No. 192338

JOURNAL ENTRY CONTAINING DECREE—October 18, 1954

1. This cause came on to be heard upon the pleadings, the evidence and the arguments and briefs of counsel for the parties, and the issues having been duly tried, and the Court, after due deliberation, having made a finding herein and filed the same in which a decision in favor of the plaintiff and against the defendants is duly made, the Court finds on the issues joined in favor of the plaintiff and against the defendants and that the prayer of plaintiff's petition should be granted.

2. It is, therefore, Ordered and Decreed that the defendants and each of them and the officers and members of the defendant union and all persons acting with the defendants or in concert with the defendants be and they hereby are enjoined and restrained from:

(1) Picketing the stores and places of business of the plaintiff and from congregating, standing or having individuals congregate and stand on the premises where plaintiff's stores are located and from coercing,

threatening, intimidating or turning aside against their will those who would go to the plaintiff's stores to sell, purchase or deliver goods, or any of the em-
[fol. 303] ployees of plaintiff.

(2) Trespassing upon plaintiff's property.

(3) Compelling or inducing, or attempting to compel or induce by threats, intimidation, persuasion, force or violence any of plaintiff's suppliers of merchandise to refuse or fail to sell and deliver merchandise to the plaintiff.

(4) Warning plaintiff's employees, agents or officers, or persons about to become such, that they will suffer or be likely to suffer any of the wrongs or injuries enjoined in this order, if they enter plaintiff's employment or continue therein.

(5) Aiding or advising any person to commit any of said wrongs or injuries.

The defendants shall pay the costs herein, for which sum judgment is awarded to plaintiff. Exceptions to the defendants to the finding and order are granted. Bond for appeal One Hundred Dollars ($100.00).

(S) Emmons, Judge.

Approved by Counsel.

[File endorsement omitted]

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[fol. 304] IN THE COURT OF COMMON PLEAS

No. 192338

NOTICE OF APPEAL—Filed October 27, 1954

The defendants hereby give Notice of Appeal to the Court of Appeals from a final order permanently enjoining and restraining the defendants and a judgment rendered by the Court of Common Pleas in the above entitled cause on the 13th day of October, 1954. Said appeal is on questions of law and fact.

(S) Smoot and Riemer, Attorneys for Defendants-Appellants, 514 Bulkley Building, Cleveland 15, Ohio, SUperior 1-1930.

[File endorsement omitted]

[fol. 305] IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT.

OPINION—May 18, 1955

Appeal on Questions of Law and Fact

Stanley Denlinger, Ray J. McGowan, and Robert Sheck, For Appellee.

Smoot & Riemer, For Appellants.

HUNSICKER, J.

This is an appeal on question of law and fact.

In this opinion, the appellee (plaintiff below) shall be designated as Fairlawn Meats, and the appellants (defendants below) shall be designated as the Union. The cause in this court, by agreement of the parties, was heard on the transcript of testimony taken in the trial court, together with the exhibits there introduced.

Fairlawn Meats operates three stores for the sale of meats and related products, to both wholesale and retail

customer. Approximately 50 persons are employed, a minority of whom were members of the Union at the time of or during the occurrences which led to the controversy [fol. 306] herein.

The Union, through its responsible officers in this area, sought to organize the employees of Fairlawn Meats, but were unable to secure more than 18 members, although, at the time of the strike herein, there were less than 10 who actively interested themselves in the conduct of the strike.

After efforts to organize the employees failed, the management was approached with a request that it recognize the Union as sole bargaining agent of the employees, that they sign a contract that would require that all of their employees join the Union within 30 days, or, if they refused to do so, they would be discharged. Other provisions of the standard contract were proposed to the management, which, after many discussions, refused to enter into a contract with the Union. The evidence discloses that there was no discrimination in the employment or discharge of members of the Union, and that they could join or not join, so far as management was concerned.

The Union, when Fairlawn Meats refused to sign the contract, then bannered each place of business. Most of the employees who were members of the Union remained away from their jobs, although a few who first left their employment returned to work, and a few signed a statement of resignation from Fairlawn Meats.

[fol. 307] At two of the stores, picketing was done by using land owned by, or under lease to, Fairlawn Meats; and, although the Union officials were notified of this fact, picketing continued over such lands.

The evidence also showed that Mr. Ekers, the manager and principal owner of Fairlawn Meats, was followed by Union officials when he went to some of the places where he purchases meat, and that, on one such instance, while at the place where he bought meat for resale, the air was let out of the tires of his automobile.

There is competent, credible evidence to show that, in order to enforce the demands of the union that Fairlawn Meats sign the standard contract requiring Fairlawn Meats to force the employees to join the Union, or be discharged,

at least two of the companies from whom meats were purchased for resale were threatened with imminent labor difficulties within their plants. As a result of these threats, such companies refused to sell any meat products to Fairlawn Meats.

Fairlawn Meats filed an action in the Court of Common Pleas, asking for both a temporary and a permanent injunction. The Union denied that the state trial court had jurisdiction to entertain the action, and, without waiving its objection to jurisdiction, said that it was engaged in a bona fide labor dispute, denied that it engaged in any unfair labor practice, and asserted its right to picket the places of business of Fairlawn Meats. The case is heard in this court de novo on the same pleadings filed in the trial court.

[fol. 308] The first question that confronts this court is that concerning the jurisdiction of the state court to proceed in a determination of the issues herein.

The Congress of the United States, by the enactment of the National Labor Relations Act, intended to exercise the full scope of its authority to regulate unfair labor practices affecting interstate commerce. Universal Car & Service Co. of Grand Rapids v. I. A. M., Lodge 1573, 27 Labor Cases, C. C. H. par. 68,825.

"Affecting commerce" is defined in the Labor Management Relations Act. See Title 29, U. S. C. A., Sec. 152 (7).

It is not necessary to discuss "jurisdictional yardsticks," as found in the regulations of the National Labor Relations Board (1 Labor Law Reporter, C. C. H., par 1610, p. 1614), to determine whether the National Labor Relations Board will assume jurisdiction. It is not necessary to explore what areas in labor controversies are left open to the jurisdiction of the state courts. It is apparent that we have before us in the instant case a question of fact which may be stated as follows: Does the business of Fairlawn Meats, Inc., affect interstate commerce within the terms of the National Labor Managements Act? Or, it may be stated: Do the facts herein show that Fairlawn Meats, Inc., is an "industry affecting commerce" within the terms of the National Labor Managements Act?

Although it is true that the "jurisdictional yardstick" established by the regulations of the National Labor Re-

[fol. 309] lations Board may be helpful as evidence to determine the fact, it is not, in the case before us, the controlling feature.

The evidence herein clearly shows that the business of the plaintiff is purely of a local character. It is limited in the main to Akron and the surrounding area. The volume of business is not large for a city and county as populous as Akron and Summit County; it does not sell any of its products outside of the state of Ohio. Its purchases from out of this state, both direct and indirect, do not constitute a large portion of the products its offers for sale to the meat-consuming public in Akron and Summit County.

We find, therefore, that there is no burden placed upon, or obstruction of, interstate commerce by any action taken by the parties to this case.

We determine, therefore, that the state courts have jurisdiction to hear the case.

We come now to the second question presented by the facts as shows by the transcript of testimony and the exhibits before us. Should the injunction be granted?

The case which pronounces the policy of the state of Ohio, with respect to organizational picketing, is Crosby v. Rath, 136 Ohio State, 352; and, while it was true that, in that case, there was much evidence of violence which accompanied the picketing, yet the court said, at page 355:

> [fol. 310] "* * * The thing upon which the defendants are insisting is that the plaintiff discharge her employees unless they become members of one of the defendant unions. There is no reason or convincing authority sustaining the contention of the defendants that they have the right to engage in picketing or boycotting under such circumstances. That this must be the law is clearly indicated by the intolerable and unexplainable predicament in which an employer might well find himself if picketed by two or more hostile unions with each one insisting that the employer discharge his employees unless they become members of that particular union alone."

The latest pronouncement by the Supreme Court of Ohio on the subject of the right to picket for organiza-

tional purposes is found in the case of W. E. Anderson Sons Co., v. Local Union #311, etc., et al., 156 O. S. 541. The syllibi in that case, which establishes the law, says:

"1. Where no unlawful purpose or object is involved, workers may by means of picketing or bannering announce their grievances to the public and thus persuade or seek to persuade prospective employees as well as prospective customers of the person against whom the picketing or bannering is directed from dealing with such person.

"2. A boycott may be defined in general terms as a concerted refrainment from business relations with another, or a concerted persuasion of third persons outside the combination to so refrain. It may be primary where there is a concerted refrainment from business relations with another, or by peaceful means a concerted inducement of others outside the combination to so refrain; or it may be secondary where there is not merely a concerted refrainment from business relations with the person against whom the boycott is directed or by peaceful means a concerted inducement of others outside the combination to so refrain, but an exercise of economic pressure upon such others to cause them to refrain from business relations with the person against whom the boycott is directed, through fear of loss or damage to themselves if they refuse to do so.

"3. Where a building trades union which has a labor dispute with one of several subcontractors on a con- [fol. 311] struction job pickets and banners the construction site for the purpose of inducing the craft employees of the general contractor to quit their employment in concert and thereby bring about a work stoppage on the entire construction job, all for the further purpose of influencing such general contractor to cause the discharge of the subcontractor with whom the union has the labor dispute such picketing and bannering constitute a secondard boycott.

"4. Picketing or bannering as a means of exercising the right of free speech will be afforded constitutional protection so long as it is lawfully conducted,

but the right of free speech is predicated on the lawful exercise of such right, and if, through conspiracy or unlawful conduct, the result of its exercise by such means unlawfully injures another in his property rights, the guaranty ceases and the exercise of the claimed right by such means may be enjoined or prohibited.

"5. Picketing or bannering for the purpose of aiding or bringing about a secondary boycott may be enjoined."

This Court of Appeals has had occasion to pass on the right to picket for organizational purposes in the case of Bean v. Local Union No. 698, et al., 94 O. App. 361, wherein we said:

"In the absence of a dispute between employer and employees, or between the union and the employer or employees, a labor union may not engage in organizational picketing, even though peaceful, for the purpose of bringing pressure to bear upon the employer to require his employees to join the union."

In the instant case, the principal object and purpose of bannering the places of business of Fairlawn Meats, Inc., was for the purpose of forcing the great majority of employees to join the Union. The resultant acts of the Union to secure their object, such as coercion of the suppliers of meats, and picketing on property under control [fol. 312] of Fairlawn Meats, was the result of the failure of the Union to secure the organization of the majority of the employees by peaceful means. This failure to convince the employees and the management was then followed by the picketing lines being establishd.

When we examine the acts of Congress, with respect to national labor relations (U. S. C. A., Title 29, Chapter 7, Section 151, et seq.), we find that Sec. 157 of the above act says:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted ac-

tivities, for the purpose of collective bargaining or other mutual aid or protection * * *."

And Section 159 says, in part:

"(a) Representatives designated or selected for the purposes of collective bargaining by the *majority* of the employees * * * shall be the exclusive representatives of all the employees in such unit * * *." (Italics ours.)

It is thus apparent that, even where jurisdiction does lodge in the National Labor Relations Board, there is an opportunity for the Union to appeal to that board, but, in the instant case, without a majority of the employees of Fairlawn Meats, it would be a futile act, and the Union would lose all right to proceed in the manner it did in this case.

Although counsel for the Union insist that the National Labor Relations Board does have jurisdiction, it seems to us that the picketing engaged in herein was part of a [fol. 313] plan to avoid an election by such board, and thus deprive the employees by majority vote to select or not to select bargaining representatives.

The declared policy of the United States, through the Labor Management Relations Act, supra, is to encourage the practice and procedure of collective bargaining, and to protect the exercise by employees of full freedom of organization and selection of representatives of their own choosing.

It is the public policy of the State of Ohio, as declared in the cases cited, supra, that employers may not be picketed for the purpose of coercing their employees to join a union. The Supreme Court of the United States has indicated its approval of such a state policy as adopted by the legislature of the state of Washington, when it said, in Building Service Employees International Union, etc., vs. Gazzam, 339 U. S. 532, 70 S. Ct. 784, 94 L. Ed. 1045, as follows:

"In a state whose public policy is that employers shall not coerce their employees' choice of a bargaining representative, a state court injunction against peaceful picketing by a labor union for the particular

purpose of compelling an employer to sign a contract which would coerce his employees' choice of a bargaining representative does not violate the right of free speech guaranteed by the First and Fourteenth Amendments of the Federal Constitution.

"(a) Since picketing is more than speech and establishes a *locus in quo* that has far more potential for inducing action than the message the pickets convey, this Court upholds a state's restraint of acts and conduct which are an abuse of the right to picket rather than a means of peaceful and truthful publicity.

[fol. 314] "(b) The picketing of the employer to compel him to coerce his employees' choice of a bargaining representative was unlawful because it was an attempt to induce a transgression of the State's policy against such coercion of employees."

We do not believe that there is a difference in the effectiveness of the policies so adopted, whether by legislative act or by declaration of the highest judicial authority in the state.

It is declared by Section 158 of the National Labor Managements Act to be an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed" to employees by Section 157 of the Act (right of employees to organize or refrain from such activity). Where, then, as in this case, no election has been held under the federal regulations and it is shown that many more than a bare majority have indicated a desire not to organize and join the union, it would be an "unfair labor practice" to compel Fairlawn Meats to compel its employees to join a union contrary to their already expressed wishes.

It is the judgment of this court, that, since the picketing herein was for organizational purposes only, and not to secure a settlement of grievances among the employees, and since the picketing in part was done on land owned by or under lease to Fairlawn Meats, and since the Union by [fol. 315] threats and coercion instituted a secondary boycott against Fairlawn Meats, the picketing, although not accompanied by violence, was nevertheless unlawful under the announced policy in Ohio.

The injunction heretofore granted by the trial court shall be continued, and this court will enter the same order with respect to such injunction as was entered by the trial court.

Decree for the appellee, at the costs of appellants.

Stevens, P. J., and Doyle, J., concur.

* * * * * * *

[fol. 316] IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

MOTION FOR NEW TRIAL OR, IN ALTERNATIVE, TO CERTIFY RECORD TO SUPREME COURT—Filed May 31, 1955

Now come Defendant-Appellants in the above cause by its attorneys and respectfully move this Court for a new trial for the reasons that the Court in its decision of May 18, 1955:

(1) denied applicability of the Labor Management Relations Act, 1947, and asserted jurisdiction, and yet inconsistent therewith, found defendants committed unfair labor practices; (2) failed to recognize the supremacy of federal law as annunciated in *Garner* vs. *Teamsters Union*, 346 U. S. 485; *Weber* vs. *Anheuser-Busch, Inc.* U. S. March 28, 1955, CCH, Para. 69064, and *Grimes & Hauer* vs. *Pollock* 163 Ohio St. (May 25, 1955); and (3) found a secondary boycott to have been engaged in without attributing responsibility to defendants where the transcript of testimony shows defendants' innocence of such conduct, and for other reasons apparent on the record, or in the alternative, to have this Court issue a Certificate of Conflict in this cause, certifying the same to the Supreme Court of [fol. 317] the State of Ohio on the ground that the judgment of this Court in accordance with its decision of May 18, 1955, affirming the trial court, conflicts with the judgments of the Court of Appeals of Hamilton County in *Friedman* vs. *International Alliance* 86 Ohio App. 189, the Court of Appeals of Mahoning County in *Donofrio* vs. *Bartenders Local et al.* (unreported), Motion to Certify refused, Supreme Court of Ohio, No. 32976; and, the Court

of Appeals, Butler County, in *Jacobs* v. *Clearing Machine Corp.* 68 Ohio Law Abs. 269.

A brief in support of this motion is attached hereto and made a part hereof.

(S) Smoot and Riemer, Attorneys for Defendants-Appellants.

[File endorsement omitted.]

[fol. 318] IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

JOURNAL ENTRY CONTAINING DECREE—June 4, 1955

1. This cause came on for hearing in this Court, de novo, on questions of law and fact. By agreement of the parties, the cause was heard on the transcript of testimony taken in the trial court, together with the exhibits there introduced, the briefs and arguments of counsel for the parties, and the issues having been duly tried, and the Court, after due consideration and deliberation, having rendered its opinion in which a decision in favor of the plaintiff-appellee and against the defendants-appellants is duly made, the Court finds on the issues joined in favor of the plaintiff-appellee and against the defendants-appellants and that the prayer of the petition of plaintiff-appellee should be granted.

2. It is, therefore, Ordered and Decreed that the defendants and each of them and the officers, directors and members of the defendant union and all persons acting with the defendants or in concert with the defendants be and they hereby are enjoined and restrained from:

(1) Picketing the stores and places of business of the plaintiff and from congregating, standing or hav-[fol. 319] ing individuals congregate and stand near the premises where plaintiff's stores are located and from coercing, threatening, intimidating or turning aside against their will those who would go to the plaintiff's store to sell, purchase or deliver goods, or any of the employees of the Plaintiff.

(2) Trespassing upon plaintiff's property.

(3) Compelling or inducing, or attempting to compel or induce by threats, intimidation, persuasion, force or violence any of plaintiff's suppliers of merchandise to refuse or fail to sell and deliver merchandise to the plaintiff.

(4) Warning plaintiff's employees, agents or officers, or persons about to become such, on the families of either, that they will suffer or be likely to suffer any of the wrongs or injuries enjoined in this order, if they enter plaintiff's employment or continue therein.

(5) Aiding or advising any person to commit any of said wrongs or injuries.

The defendants-appellants shall pay the costs herein for which sum judgment is awarded plaintiff-appellee. To all of which the defendants-appellants except.

(S) Oscar Hunsicker, Judge, for the Court (handwritten).

[File endorsement omitted]

[fol. 320] IN THE COURT OF APPEALS
NINTH JUDICIAL CIRCUIT

February Term, 1955.

JOURNAL ENTRY DENYING MOTION FOR NEW TRIAL TO CERTIFY —June 4, 1955

This cause came on for hearing upon the motion of the appellants for a new trial, or, in the alternative, to certify the record to the Supreme Court, which motion was heretofore filed and has this day been refiled, and was submitted to the Court.

Upon consideration whereof, said motion, and each branch thereof, is hereby overruled.

To which ruling said appellants except.

It is now ordered that this cause be remanded to the Court of Common Pleas of Summit County, Ohio, for execution, and for all further proceedings herein,

All at the costs of said appellants.
Approved:
(S) Oscar Hunsicker, Judge—For the Court.

[File endorsement omitted]

[fol. 321] IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT OF OHIO

NOTICE OF APPEAL—Filed June 17, 1955

The above named defendants-appellants hereby give notice of appeal to the Supreme Court of Ohio from a judgment entered in the Court of Appeals in the above entitled cause on the 4th day of June 1955. Said appeal is on questions of law and is taken to the Supreme Court as of right:
(a) In a cause involving, among other questions, a debatable constitutional question;
(b) On condition that the Motion to Certify be allowed by the Supreme Court.
Said judgment, exclusive of the caption thereof, reads as follows:
1. This cause came on for hearing in this Court, de novo, on questions of law and fact. By agreement of the parties, the cause was heard on the transcript of testimony taken in the trial court, together with the exhibits there introduced the briefs and arguments of counsel for the parties, and the issues having been duly tried, and the Court, after due consideration and deliberation, having rendered its [fol. 322] opinion in which a decision in favor of the plaintiff-appellee and against the defendants-appellants is duly made, the Court finds on the issues joined in favor of the plaintiff-appellee and against the defendants-appellants that the prayer of the petition of plaintiff-appellee should be granted.
2. It is, therefore, Ordered and Decreed that the defendants and each of them and the officers, directors and members of the defendant union and all persons acting with the defendants or in concert with the defendants be and they hereby are enjoined and restrained from: (1) Picketing the stores and places of business of the plaintiff and from

congregating, standing or having individuals congregate and stand near the premises where plaintiff's stores are located and from coercing, threatening, intimidating or turning aside against their will those who would go to the plaintiff's store to sell, purchase or deliver goods, or any of the employees of the plaintiff. (2) Trespassing upon plaintiff's property. (3) Compelling or inducing, or attempting to compel or induce by threats, intimidation, persuasion, force or violence any of plaintiff's suppliers of merchandise to refuse or fail to sell and deliver merchandise to the plaintiff. (4) Warning plaintiff's employees, agents or officers, or persons about to become such, or the families of either that they will suffer or be likely to suffer any of the wrongs or injuries enjoined in this order, if they enter plaintiff's employment or continue [fol. 323] therein. (5) Aiding or advising any person to commit any of said wrongs or injuries.

The defendants-appellants shall pay the costs herein for which sum judgment is awarded plaintiff-appellee. To all of which the defendants-appellants except.

(S) Oscar Hunsicker, Judge.

* * * * * * *

(S) Smoot and Riemer, Attorneys for Defendants-Appellants, Mortimer Riemer, of Counsel.

[File endorsement omitted]

[fol. 324] IN THE SUPREME COURT OF OHIO

MOTION TO CERTIFY—Filed June 27, 1955

Now comes, Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 427, et al., Appellants herein and represent that on the fourth day of June, 1955, in an action pending in the Court of Appeals of Summit County, Ninth Judicial District, said Court rendered a decree affirming a decree of permanent injunction theretofore rendered in favor of the Appellee by the Common Pleas Court of said County and enter final judgment for Plaintiff-Appellee herein.

Appellants further represent that it has heretofore filed Notice of Appeal in the Court of Appeals and a similar Notice in this Court as required by law, and that said case is one of both public and great general interest; that it involves debatable constitutional questions; that error prejudicial to these Appellants has intervened in the proceedings had in the said Court of Appeals; and that said Judgment is in conflict with the Judgments of the Court of Appeals of Mahoning County in *Donofrio* v. *Bartenders* [fol. 325] *Local* (Common Pleas No. 132350, Mahoning County, Motion to Certify to the Supreme Court refused, No. 32976) and of the Court of Appeals of Butler County in Jacobs v. Clearing Machine Corp., 65 Ohio Lab Abs. 269.

Wherefore, said Appellants make application for an order directing said Court of Appeals to Certify its record to the Supreme Court.

(S) Smoot and Riemer, Attorneys for Defendants-Appellants, Mortimer Riemer, of Counsel.

[File endorsement omitted]

[fol. 326] IN THE SUPREME COURT OF OHIO

January Term, 1955

Case No. 34542

Title of Case

FAIRLAWN MEATS, INC., Plaintiff-Appellee,

v.

AMALGAMATED MEAT CUTTERS AND BUTCHERS WORKMEN OF NORTH AMERICA, LOCAL No. 427, A. F. L., et al., Defendants-Appellants.

Attorneys: Stanley Denlinger, First National Tower; Ray McGowan, Robert Sheck, Second National Bldg., Akron, Ohio.

Smoot & Riemer, Bulkley Building, Cleveland, Ohio.

Action: Appeal from the Court of Appeals of Summit County.

Motion for an Order Directing the Court of Appeals of Summit County to Certify Its Record.

JOURNAL ENTRIES OF DENIAL OF MOTION TO CERTIFY, DISMISSAL OF APPEAL AND DENIAL OF APPLICATION FOR REHEARING.

* * * * * * *

[fol. 327] Journal No. 41, p. 613.

Wednesday, November 9, 1955

Motion for an Order Directing the Court of Appeals of Summit County to Certify Its Record:

It is ordered by the Court that this motion be, and the same hereby is, overruled.

Journal No. 41, p. 616. Wednesday, November 8, 1955

Appeal From the Court of Appeals of Summit County:

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Summit County, upon the motion of the appellee to dismiss the appeal, filed as of right herein, and was argued by counsel.

On consideration whereof, it is ordered and adjudged that said appeal be, and the same hereby is, dismissed sua sponte for the reason no debatable constitutional question [fol. 328] is involved in said cause.

It is further ordered and adjudged that the appellee recover from the appellants its costs herein expended, taxed at $.....

Ordered, That a special mandate be sent the Court of Common Pleas of Summit County, to carry this judgment into Execution.

Ordered, That a copy of this entry be certified to the Clerk of the Court of Appeals of Summit County, "for entry".

Journal No. 41, p. 636. Wednesday, December 7, 1955.

Rehearing Docket:

Upon consideration of the above application for rehearing, it is ordered by the Court that rehearing be, and the same hereby is, denied.

[fols. 329-330] IN THE SUPREME COURT OF OHIO

* * * * * * *

APPLICATION FOR REHEARING—Filed November 22, 1955

Now comes the Defendants-Appellants by their attorneys, and make application for a rehearing of the above captioned action for the reasons stated below. Argument is limited to the specific reasons contained herein.

Rehearing should be granted in the instant case for the following reasons:

1. In refusing appeal this Court allows a Court of Appeals decision to stand which is in conflict with *Grimes & Hauer, Inc.* v. *Pollock, et al.*, 163 Ohio S., 372, in controversies coming within the provisions of the National Labor Relations Act and which affect commerce.

2. In refusing appeal this Court allows a Court of Appeals decision to stand which denies to employees the right to strike to redress their grievances with their own employer.

3. In refusing the appeal this Court allows the erroneous judgment of the lower court to stand on matters of great public interest and concern without settling important questions of Ohio law presented by this appeal.

A brief in support of this application for rehearing is attached hereto.

Respectfully submitted, (S) Smoot and Riemer, Attorneys for Defendants-Appellants.

[File endorsement omitted]

[fol. 331] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 332] PLAINTIFF'S EXHIBIT 2-A

Wage Rates Negotiated by Meat Cutters Local Union 427 With Cleveland Food Industry Committee

The following minimum rates and contract revisions ratified by membership meeting June 23, 1953, are effective from June 1, 1953.

	Weekly	*Hourly*
Meat Department Heads—Super Markets	$95.00	$2.375
Master Markets or other large self-service markets		
Meat Department Heads	86.00	2.15
Service Stores		
Back Room Cutter, Box Man	84.00	2.10
(Those in above three classifications will receive above or a minimum of $5.00 per week.)		
Journeyman—(Less than 50% of time cutting)	81.00	2.025
(Those in above classification will receive a minimum of $4.00 per week or the minimum rate whichever is the greater.)		
Apprentices		
1st 3 months	48.50	1.21
2nd 3 months	52.50	1.31
2nd 6 months	54.50	1.36
3rd 6 months	57.50	1.44
4th 6 months	61.50	1.54
5th 6 months	66.50	1.66
6th 6 months	68.50	1.71
Females		
1st 3 months	42.50	1.06
Next 6 months (3rd to 9th)	45.50	1.14
Next 9 months (9th to 18th)	51.50	1.285
Next 6 months (18th to 24th)	55.50	1.385

Over 24 months	60.50	1.51
(Full-time Female employees now receiving $58.28 or more per week will receive a minimum increase of $3.00 per week.)		

[fol. 333] *Part-Time:*

Part-time help rates are the hourly rates shown for full-time based on the member's classification and length of service.

The new rates are to be put into effect June 29, 1953. Back-pay is to be paid within a reasonable period.

Contract has been revised as follows:

Par. 8. Regular work days for the 40 hour work week in Cuyahoga County:

Monday, Tuesday, Wednesday, Thursday—9:00 A. M. to 6:00 P. M. Friday and Saturday—8:00 A. M. to 6:00 P. M.

Par. 11 Time and one-half after 40 hours in any regular work week.

Par. 17. Time and one-half after 32 hours in any holiday week.

Par. 26. Eliminate.

Back pay claims for those who changed jobs after June 1, 1953 and before July 4, 1953 must be made in writing to the companies by July 31, 1953. Send copy of written request to Union office.

Sam Pollock, President, June 29, 1953.

SP/elb

[fol. 334] PLAINTIFF'S EXHIBIT 2-B

Agreement

1. Agreement made this _____ day of _____, 1952, at Akron, Ohio, by and between _____, individually and collectively, for its members, hereinafter referred to as the Employer, and Local Union 427, Amalgamated Meat Cutters and Butcher Workmen of North America, A. F. of L., hereinafter referred to as the Union.

Recognition

2. The Employer recognizes the Union as the sole bargaining agent for all employees in the meat departments of the Employer located in the Counties of Cuyahoga, Lake, Geauga, Ashtabula, Lorain, Medina, Erie, Ashland, Richland, Huron, Summit, Stark and Portage.

Union Shop

3. All employees covered by this agreement shall, within 30 days after the execution of this agreement or 30 days after their employment, whichever is later, during the term of this agreement, become members of the Union and remain members of the Union in good standing during the life of this agreement. The Employer agrees to notify the Union of any new help.

Check-Off of Union Dues

4. The Employer shall, for the term of this agreement, deduct initiation fees and Union dues from the first pay of each month of employees who are members of the Union and who individually and voluntarily certify in writing authorization for such deductions. The Employer shall remit all sums deducted in this manner to the Union before the fifteenth (15th) day of the month for which the initiation fees and dues were collected.

Union Official Access to Store

5. The appropriate store official shall grant to any accredited Union official access to the store and to the working areas and to the areas where members of the Union are working for the purpose of satisfying himself and the company representatives that the terms of this agreement are being complied with, provided the Union official shall first advise the appropriate store official of the purpose of his visit.

[fol. 335] Regular Work Week

6. Forty-three (43) hours shall constitute the work week for all fulltime employees, Monday to Saturday, inclusive.

7. Female employees may have the option of working

on a forty-three (43) hour, five and one-half (5½) day basis, or on a forty-two (42) hour, five (5) day basis. Such employees must exercise their option in this respect within thirty (30) days after the forty-three (43) hour work week goes into effect.

8. Effective June 1, 1953, the work week shall be forty (40) hours, in any five days of any one week.

Overtime

9. Time and one-half shall be paid in excess of forty-three (43) hours in any work week.

10. If any individual employer is open after 6:00 P. M. on more than two (2) days, time and one-half shall be paid for work on those nights in excess of two (2) days during any one week for full-time help.

11. No employee shall be permitted to accept time off in lieu of overtime pay.

Sundays and Holidays

12. There shall be no work performed on Sundays and the following legal holidays, except in cases of extreme emergency to protect the property of the Employer. All work performed on Sundays or the following legal holidays shall be paid for at the rate of double time, that is, straight time, plus straight time.

13. New Year's Day; Decoration Day; Independence Day; Labor Day; Thanksgiving Day; and, Christmas Day, or days legally celebrated in lieu thereof.

Holiday Work Week

14. Thirty-five (35) hours shall constitute the work week for all employees in a week in which any of the above specified holidays shall fall. All work performed in excess of thirty-five (35) hours in any such holiday weeks shall be compensated for at the rate of time and one-half. All regular full-time employees shall be paid eight hours' pay for holidays not worked.

[fol. 336] 15. Effective June 1, 1953, thirty-two (32) hours shall constitute the work week in a week in which any of the above specified holidays shall fall.

Minimum Rates

16. The minimum rates of pay for full-time employees for the basic work week, as set out in Paragraph 6, shall be as follows:

	Weekly	*Hourly*
17. For Meat Department Heads—Super Markets, Master Markets or other large self-service markets	$89.60	$2.07
18. For Meat Department Heads—Service Stores	81.00	1.88
19. Box Man or Backroom Man. (All journeymen meat cutters working in self-service meat departments shall be classified as box men or backroom men. All journeymen meat cutters working in service meat departments, who work in the box or in the backroom better than 50% of their time, shall also be classified as box men or backroom men)	79.00	1.84
20. For Full-Time Journeymen Meat Cutters	76.40	1.78
21. For Full-Time Male Apprentices:		
1st 3 months	44.50	1.04
2nd 3 months	48.50	1.12
2nd 6 months	50.50	1.17
3rd 6 months	53.50	1.24
4th 6 months	57.50	1.34
5th 6 months	62.50	1.45
6th 6 months	64.50	1.50

After the third year, the regular journeymen meat cutter rate will apply.

[fol. 337] 22. For Full-Time Female Help:

1st 3 months	$40.50	$ .94
3 to 9 months	43.50	1.01
9 to 18 months	48.50	1.13
18 to 24 months	53.70	1.25
Over 24 months	58.70	1.37

23. Journeymen meat cutters, relieving head meat cutters one week or more, shall receive the minimum rates for the head meat cutter. However, in no event shall he suffer a decrease in wages.

Minimum Increase

24. All regular full-time employees shall receive the minimum rate for their classification or an increase of $2.00, whichever is the greater, but not both.

Part-Time Rates

25. The minimum rates of pay for part-time employees shall be pro-rated on an hourly basis.

26. Part-time employees shall be given credit for actual hours of work in arriving at their regular hourly rate.

27. Part-time employees when ordered to report for work shall be guaranteed a minimum of five (5) hours' work per day.

Service Credit

28. Employees shall receive credit for all time served under different employers in arriving at the proper wage rate.

Equal Pay for Equal Work

29. Female employees replacing male employees shall be paid the rate for male employees providing such female employees are able to perform in full the duties of male employees.

No Reduction in Pay

30. No employee shall suffer a reduction of pay as a result of the signing of this agreement.

[fol. 338]

Rest Periods

31. There shall be no split shifts or enforced rest periods, and all time in one day shall run continuously from starting to quitting time, except that all employees shall receive a paid rest period of ten (10) minutes in the morning and ten (10) minutes in the afternoon, and a lunch period of one hour on the employee's time.

Notice for Discharge and Lay-Offs

32. No full-time employee shall be discharged without three (3) days' notice or three (3) days' pay in lieu of notice. No notice or advance pay will be necessary when employees are discharged for dishonesty, drunkenness on the job or insubordination.

33. All employees shall give three (3) days' notice to the Employer. Upon failure to do so, the Union shall discipline employees.

Vacations

34. All full-time employees with one (1) year's continuous service with an individual employer shall receive one (1) week's vacation with pay.

35. All full-time employees with three (3) years' or more continuous service with an individual employer shall receive two (2) weeks' vacation with pay.

36. Part-time employees who have a continuous record of one year or more of over thirty (30) hours worked per week shall be granted vacations on the same basis as full-time employees, except that their vacation pay shall be based on the current average number of hours they have worked per week.

37. Those receiving more shall not be reduced. Employees shall become eligible for vacations on the anniversary date of employment. Vacation schedules may be changed if employee and employer are agreed.

38. Employees entitled to vacations shall leave at 8:30 A. M., Monday morning, and report to work the following Monday morning. Vacations earned are not accumulated beyond two (2) weeks in any year. Vacation money must be paid in advance.

39. If a holiday (specified in Paragraph 13) falls within an employee's scheduled vacation period, the employee will receive an extra days's pay.

[fol. 339] Health and Welfare

40. Employer herein agrees that a Health Welfare and Death Benefit Fund shall be established, which is legal under the laws of the State of Ohio, and under the laws of the United States. It is understood and agreed

by the parties hereto that no fund shall be set up on which the contributions made by employer hereunder are construed to be wages under the Federal Wage and Hour Act. Nor is any fund to be established under which the payments of the Employer are considered by any taxing authority as wages upon which withholding tax is to be paid or upon which social security contributions are to be made by Employer.

41. The fund which is to be established shall be jointly administered under a trust agreement to be executed by the parties hereto providing administration by a Board of Trustees consisting of two representatives of the Union, and two representatives of the Employer, and providing for a tie breaker. This fund shall be used to establish insurance against sickness, accident, or such other contingencies as may impair the welfare of the Union members as may be determined by the Board of Trustees.

42. Each individual employer agrees to pay monthly into the Fund the sum of One Dollar ($1.00) per week for each full-time employee on each such Employer's payroll. Each such employer shall forward on the first day of each month to the Fund a record sheet of his full-time employees for the preceding month with payment to the Fund to cover said employees. The first payment shall be due October 1, 1952 for the month of September, 1952.

Seniority

43. As to lay-offs and rehiring, the principles of seniority will apply. Seniority shall be determined on the length of service of the employee with regard to his experience and ability to perform the work.

44. In the matter of promotions and transfers from one type of work to another or from one store to another, the employer shall have the right to exercise his final judgment after giving due regard to seniority. Records on seniority shall be available to the Union at all times.

Workmen's Compensation

45. It is agreed that all meat market operators with one (1) or more employees shall carry Workmen's Com-

[351]

Defendants' Exhibit 25 + 25

NAME	ADDRESS	PHONE NO.	SEX	PLACE OF EMPLOYMENT	DATE JOINED UNION	DATE WENT ON STRIKE
Robert Vargo	1138 Sherman, Akron, O.	PA. 4-4710	M	Tallmadge, O.	12/3/53	—
Ruth E. Smith	3176 Shade Rd., Akron, O.	None	F	W. Richfield	9/25/53	— 2/4/54
David Rodacker	2039 Front St., Cuyahoga Falls	SW. 4-7255	M	Tallmadge, O.	12/3/53	— 2/20/54
Therom W. O'Dell	1491 Chippewa Ave., Akron	RE. 3-3819	M	Tallmadge, O.	12/3/53	— ∞
Mary J. Horn	Box 162, W. Richfield, O.	8230	F	W. Richfield	10/23/53	— 2/4/54
Violet Guthrie	Route 176, W. Richfield, O.		F	W. Richfield	2/1/54	— 2/4/54
Ada Kish	118 W. Mildred St., Akron, O.	FR. 6-3329	F	Tallmadge, O.	12/3/53	— —
Margaret E. Conley	Box 122, Bath, Ohio		F	W. Richfield	12/9/53	— 2/4/54
William M Minto	R.D. #1, Stein Rd., Peninsula, O.		M	W. Richfield	2/14/54	— 2/4/54
John Zuchniak	1005 Annabelle Dr., Akron, O.		M	Tallmadge	7/17/50	— —
Max Krausman	3422 Wyoga Lake Rd., Cuyahoga Falls	WA. 8-9890	M	W. Market St.	8/5/53	— (2/4/54 - 2/12/54)
Herschel Ramsey	1294 Inman Ave., Akron, O.		M	Tallmadge	5/13/49	— —
Joe Lancaster	399 1/2 Bishop St., Akron		M	Tallmadge	9/4/45	— —
Paul Levine	953 Hartford Ave., Akron	UN. 4-3575	M	W. Market St.	8/5/53	— —
Jay Edwin Garver	1842 Collinwood, Akron 10			Tallmadge	5/7/47	— —
LeRoy J. Smith	5046 Alger Rd., W. Richfield	230	M	W. Richfield	12/2/53	— 2/4/54
Martin Mermelstein	1447 Fernwood Dr., Akron, O.		M	Tallmadge	5/2/51	— —
William Brigham	876 Bellevue Ave., Akron		M	W. Market	1/25/50	— —
Marietta Channell	410 Fuller Ave., Akron, O.	PA. 4-0850	F	W. Market St.	2/9/51	— (2/4/54 to 2/12/54)
Robert Hurst transferred from [illegible]				W Richfield	3/10/47 L.U. 347	Stayed in —

John Zuchniak	[illegible]		M	Tallmadge	7/17/50	—
Max Krausman	3422 Wyoga Lake Rd., Cuyahoga Falls	WA. 8-9890	M	W. Market St.	8/5/53	— (2/4/54 - 2/12/54)
Herschel Ramsey	1294 Inman Ave., Akron, O.		M	Tallmadge	5/13/49	— —
Joe Lancaster	399 1/2 Bishop St., Akron		M	Tallmadge	9/4/45	— —
Paul Levine	953 Hartford Ave., Akron	UN. 4-3575	M	W. Market St.	8/5/53	— —
Jay Edwin Garver	1842 Collinwood, Akron 10			Tallmadge	5/7/47	— —
LeRoy J. Smith	5046 Alger Rd., W. Richfield	230	M	W. Richfield	12/2/53	— 2/4/54
Martin Mermelstein	1447 Fernwood Dr., Akron, O.		M	Tallmadge	5/2/51	— —
William Brigham	876 Bellevue Ave., Akron		M	W. Market	1/25/50	— —
Marietta Channell	410 Fuller Ave., Akron, O.	PA. 4-0850	F	W. Market St.	2/9/51	— (2/4/54 to 2/12/54)
Robert Hurst transferred from Local 347 - Charleston, W. Va.				W Richfield	3/10/47 L.U. 347	Stayed in —
Delbert Brown transferred from Local 500 - Cleveland, O. - 12/31/53				W. Richfield, O. (L.U. 500)		2/4/54
Helen Mayo	653 Garfield St. Akron		F.	Tallmadge, O.	2/26/54	3/8/54
Thomas Tandarich	1186 Andrus St.		M.	Tallmadge, O.	3/2/54	3/8/54
Don Herbruck	1191 Wilbur Ave.		M.	"	3/2/54	3/8/54
[illegible]	CARPENTER 617 [illegible]		M.	"	1/20/54	2/4/54
[illegible]	[illegible] 1201 Grant St				1/31/54	2/4/54

(251)

1884

pensation under the Workmen's Compensation Law of Ohio.

[fol. 340] Arbitration

46. Should there be a dispute concerning the terms of the agreement or their applications in the meat departments of the employer, which cannot be settled by a representative of the employer and a represnetative of the Union, the matter of disagreement shall be submitted to a Board of Arbitration consisting of two (2) men representing the employer, two (2) men representing the Union, and one (1) disinterested arbiter selected by mutual agreement. The decision of the Board of Arbitration shall be rendered within thirty (30) days of the date of dispute being submitted for ar*gib*t-ation and the decision of the Board of Arbitration shall be final and binding.

Wage Stabilization Board Approval

47. The Employer agrees to join with the Union in an application to the Wage Stabilization Board for the approval of this contract. It is clearly understood between the parties that all increases in wages will be effective as of ....., 1952. It is also agreed between the parties that the reduction in hours shall become effective upon approval by the Wage Stabilization Board.

48. The Employer further agrees to join with the Union, in a request to the Wage Stabilization Board, for the approval of the Health and Welfare Fund. This fund will be retroactive, when approved, to .....

No Strike—No Lockout

49. There shall be no strikes, lockouts, stoppage of work or picketing during the life of this agreement.

Management Rights

50. The Employer shall retain all management rights and functions it possessed prior to entering into a contract with this Union, except such rights as are relinquished and restricted in this contract.

Termination

51. This agreement shall be effective as of ....., 1952 and shall expire ....., and shall automatically continue from year to year unless notice is given in writing by either party not less than sixty (60) days prior to the expiration date hereof, except as hereinafter provided.

[fol. 341]

Wage Reopener

52. Providing they are approved by the Wage Stabilization Board, and to the extent that they are approved, the new wage rates, shown herein, when placed in effect in accordance with Paragraph 16 through 22 shall be continued in effect during the remainder of the term of this agreement, provided, however, that with respect to wage rates, this agreement may be reopened on ....., by a sixty day prior written notice given by either party to the other party; and provided further that in the event such a notice is given, negotiations shall proceed promptly to a mutual agreement or until negotiations are terminated by either party on five days' written notice; and provided, further that in the event such negotiations are thus terminated by either party because no agreement has been reached, a strike or a lockout shall not then be a violation of this agreement. When such wage dispute is settled by agreement of the parties, this entire agreement, as modified or supplemented, shall be fully reinstated; and provided further that, except by mutual consent given at the time, no wage dispute shall be subject to arbitration.

The Union	For the Employer
.....	.....
International Representative	
.....	.....
Committeeman	
.....	.....
Committeeman	
.....	.....
Committeeman	
.....	.....
Committeeman	

[fol. 342] PLAINTIFF'S EXHIBIT 5

I Thomas Tandarich on my own free will do hereby resign my job at Ekers Packing House Market as of March 6, 1954.

(S) Thomas Tandarich.

Witness: (S.) Edward C. Gerry, 1078 Valdes Ave., Akron. (S) Howard Schlegel, 1334 Meriline, Cuyahoga Falls.

[fol. 343] PLAINTIFF'S EXHIBIT 10

(Letterhead)
Earl C. Gibbs, Inc.
Wholesale Meats

Phone: OLympic 1-1550
3378 West 65th Street
Cleveland 2, Ohio

Member
American Meat Institute

March 5, 1954

To whom it may concern:

B. H. Ekers has been a customer of ours for over 30 years, and is a valued account.

We recently were advised by our union president that it would be against our best interest, as far as good relationship with our union is concerned, to continue to sell to Mr. Ekers.

In order to preserve our good relationship with the union and its members, our workers, we have abided by their request.

Very truly yours,

Earl C. Gibbs, Inc.
(S) Earl M. Gibbs, Vice President.

EMG/gcl

[fol. 344] PLAINTIFF'S EXHIBIT 11

Feb. 27/54

Fairlawn Meat Inc.

Gentlemen!

This is to state that I am hereby resigning from your employ of my own free will as of today.

(S) Walter D. Carpenter, 629 S. Prospect St., Ravenna, Ohio.

[fol. 345] PLAINTIFF'S EXHIBIT 12

Akron, Ohio.

February 10, 1954

We, the undersigned, employees of Fairlawn Meats, Inc., hereby certify that there is no dispute or disagreement between us and our employer, Fairlawn Meats, Inc. as to hours of work, rate of pay, or any other conditions effecting our employment and we are not on a strike against our employer, and we are not in favor of our employer signing any agreement that will force or compel us to join any union.

Name:	Name:
1. John W. Zuchniak	1. Robert G. Vargo
2. Audra K. Kitchen	2. Jack B. Horn
3. Dorothy M. Stiles	3. Thomas R. Dutton
4. Richard L. Gromen	4. William Horn
5. Edward C. Gerry	5. June Moyer
6. Thomas Tandarich	6. Howard Schlegel
7. Hurschel E. Ramsey	7. Henry Atkinson
8. Harold Barnett	8. Mary R. Gerry
9. David D. Rodocker	9. Frances F. Barrett
10. Marie Lukocwich	10. Dennis Brown
11. R. H. Thursby	11. Margaret Carlisle
12. Joe F. Lancaster	12. Louis Mueller
13. Jay E. Gasver	13. Don Herbruck
14. Martin Mermelstein	14. Rena Barnett
15. T. W. O'Dell	15.
16. Helen Mayo	16.
17. Ada Kish	17.

[fol. 346] Akron, Ohio.

February 10, 1954

We, the undersigned, employees of Fairlawn Meats, Inc., hereby certify that there is no dispute or disagreement between us and our employer, Fairlawn Meats, Inc. as to hours of work, rate of pay, or any other conditions effecting our employment and we are not on a strike against our employer, and we are not in favor of our employer signing any agreement that will force or compel us to join any union.

Name:

1. Eugene B. Moyer
2. Robert W. Hurst
3. Cecil F. Miller
4. Paul Levine
5. William H. Brigham
6. Arthur C. Sell
7. Max Krausman
8. George White
9. Mary Brigham
10. Anthony Panella

[fol. 347] PLAINTIFF'S EXHIBIT 16

I Robert G. Vargo on my own free will do hereby resign my job at Ekers Packing House Market as of March 6, 1954.

(S) Robert Vargo.

Witness: (S.) Edward C. Gerry, 1078 Valdes Ave., Akron. (S) Howard Schlegel, 1334 Meriline, Cuyahoga Falls.

[fol. 348] PLAINTIFF'S EXHIBIT 17

I Donald Herbruck on my own free will do hereby resign my job at Ekers Packing House Market as of March 6, 1954.

(S) Don Herbruck.

Witness: (S) Edward C. Gerry, 1078 Valdes Ave., Akron. (S) Howard Schlegel, 1334 Meriline, Cuyahoga Falls.

[fol. 349] DEFENDANTS' EXHIBIT 15-A

Earl C. Gibbs, Inc.

Summary of Cattle Slaughtered
and
Cattle Purchased—Ohio and out of State of Ohio

September 28, 1953 to December 31, 1953

Number Slaughtered for Period	Number of Head of Cattle
Steers and Cows	10,665
Bulls	3,110
Condemned	11
Killed for Others	47
Total Slaughtered	13,833

Cattle Purchased		Percentage
Within State of Ohio	5,484	38.50
Outside State of Ohio	8,758	61.50
Total	14,242	100.00

[fol. 350] DEFENDANTS' EXHIBIT 15-B

Earl C. Gibbs, Inc.

Account with Fairlawn Meats, Inc.
2246 West Market Street, Akron, Ohio

Summary of Charges for Months Purchases Year 1953

Month of		Total Charges
January	1953	$ 21,489.79
February	"	27,876.39
March	"	21,410.43
April	"	16,866.54
May	"	14,128.80
June	"	11,031,29
July	"	4,261.29
August	"	2,031.21
September	"	5,538.03
October	"	3,314,20
November	"	7,694.95
December	"	10,430.98
Total		$146,073.90

Here follows Photolithograph, side folio 351

[fol. 352] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed May 7, 1956

The petition herein for a writ of certiorari to the Supreme Court of the State of Ohio is granted, and the case is transferred to the summary calendar. The Solicitor General is invited to file a brief in this case on behalf of the National Labor Relations Board.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(793-0)